

# THE WAIL OF KASHMIR

IN QUEST OF PEACE

R.N. KAUL



Vital facts, crucial issues and the repercussions of long-term subjugation on the psyche of the Pandits, has been vividly highlighted. The agony of a people, degraded and discriminated against on their own soil, during foreign rule, and before and after Kashmir's accession, lays bare the soul of Kashmir and the Kashmiri Pandits.

Provocative issues like Kashmir's accession to India (which if effected within the prescribed time frame, could have eliminated most of the problems that followed), self-determination for Kashmiris, Article 370 of the Indian Constitution and greater autonomy for the State, have been dwelt upon in great detail. Controversies have been questioned and repudiated and myths dispelled. The role of the rulers, politicians and political parties has been recapitulated authentically, and constitutional matters classified by reference to international law and principles, the Indian and Jammu and Kashmir Constitutions, supported by the opinions of legal luminaries.

The postscript at the end of the Epilogue updates the book to developments culminating in the Lahore Declaration of 21st February, 1999, between the Prime Ministers of India and Pakistan.



WITH LOVE TO  
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**THE WAIL OF KASHMIR**  
*In Quest of Peace*





(l-r) R N Kaul, the author, with Pt Jawahar Lal Nehru,  
Khan Abdul Gaffar Khan and Sheikh Abdullah in 1939.



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R. N. KAUL



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*Dedicated*  
*to*  
*The memory of*

*D. P. DHAR (1918-1975)*







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## *Preface*

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*"Great is truth and shall prevail,  
Therefore must we weep and wail."*

*— Laure E. Richards*

Even as absolute truth takes time to be recognised and accepted, wail and woe need much longer to register and relieve. The tragic story of the Kashmiri Pandit calls for a benevolent exposition in the right perspective.

Although limited source material is available on the history of Kashmir since the earliest time, there is yet a paucity of cogent, updated and authoritative record of the complex political, social, religious, economic and constitutional changes that have overtaken the State of Jammu and Kashmir, particularly since 1947. It is necessary, therefore, to present true facts supported by credible historical evidence, non-partisan interpretation of constitutional provisions and objective conclusions governing the evolution and dimensions of the status of Kashmir since Independence. The story of the constitutional advance and the empowerment of its people is narrated in five chapters (4-8), and examined in the light of political demands made.

For the Kashmiri Pandits (diminished from a powerful majority to a small and helpless minority), the interregnum was excruciatingly painful. Passage of time may act as a healing balm, but the scars remain as a reminder of gross injustice inflicted by the merciless march of history. As the chronicles of Kashmir unfold, the Kashmiri Pandit, a victim of national apathy and international intrigue, is crying out for understanding and sympathy.



Misunderstood, the image in the public mind coloured by misinformation and disinformation, inspired by fundamentalist propaganda, the Kashmiri Pandit deserves a fair deal, an objective appraisal of his role in shaping the ancient, medieval and contemporary history of Jammu & Kashmir. This book is a sincere attempt at unravelling the enigma that is the Kashmiri Pandit, on whom have been heaped words of dislike and praise, depending upon individual predilection. The Kashmiri Pandit has been described as an individualist, arrogant, jealous, cowardly, hypocrite; cunning, self-centred, a symbol of authority and oppression, an 'informer', cultured, traditionalist, patriotic and from an overtly successful community.

Chapter one delves into the origin, culture and historical background of this community since the earliest times and their crucial role in the development of Kashmir, with their notable achievements and contributions to the evolution of its society and polity. Chapter two outlines the compulsions they suffered in their migration from Kashmir and provides a case study of an extraordinary and accomplished son of Kashmiri migrants, who served the British in the nineteenth century and shone as a diplomat in the political cauldron of Central Asia; describes his return to India and subsequent disgust with the British, who denied him his due. Other Kashmiri Pandits, including the Nehrus, are briefly mentioned to serve as role models.

Chapter three and four offer lessons of history on subjugation and colonisation. Dealt with in some detail are the series of foreign invasions from Central Asia and Arabia in the pre-medieval and medieval periods, followed by the classical, colonial policies of 'trade and invade', 'divide and rule' and 'disunite and quit', of the British.

The account of Kashmir's accession to India, its circumstances and implications, is told with care and without equivocation in Chapter five. Chapter six analyses the complicated provisions of Article 370 of the Indian Constitution, its spirit and significance, together with procedures for its amendment and abrogation.



Chapters seven and eight, tackle the 'hot topic' — autonomy or de-accession. Subject of an acrimonious national debate, it has shed less light and generated more heat. A sincere attempt has been made to impartially examine the edifice on which Jammu & Kashmir today stands. Will another dose of autonomy lead to its de-accession from the Indian Union? In a review of the comparative constitutional rights of the Kashmiris in Pakistan, in POK (Pakistan Occupied Kashmir) and other former State territories, it is established beyond any doubt, that the so-called independence (*azadi*) in Pakistan for them is truly and really without independence. There is nothing to match the existing constitutional and political status and authority for them, compared with what their brethren in the J&K State have.

Chapter nine deals with the distress and misery caused to the Pandits by the communal upsurge of 1985 and 1989: genocide, manifestation of communalism, criminalisation of politics and its consequential impact on the Kashmiri Pandit; violation of fundamental and human rights and the failure of the Union and the State governments to accord protection to the small community in terms of constitutional safeguards and the law. Chapter ten reviews the 'sweet and sour' relationship that Sheikh Abdullah, the most important leader of Kashmir, had with the Kashmiri pandits, (as described by him in his autobiography) and the impact of his views on the community. Apart from questioning some of his historical conclusions and clarifying other versions and views, it is necessary to place these in a correct perspective, in the interest of better and peaceful relations between the different people of Jammu and Kashmir.

Chapter eleven discusses the migration of Kashmiri Pandits due to killings, threats of death, destruction of property and the desecration of religious places. The desire to return to the Valley, discarding the refugee camps and miserable existence therein, has not fructified due to the unreasonable conditions imposed by political leaders and apprehension about safety combined with the lack of means of subsistence. The plight and predicament of the



Pandits has been realistically brought out through a tragic recount of the atrocities and the recapitulation of ground realities. It is hoped that the Government of India and the State will restore and guarantee the rights of the Kashmiri Pandits, howsoever daunting the struggle, and ensure a safe passage back to hearth and homes.

The epilogue, somewhat long but necessary, updates the book in even sections and reviews (i) 10 years of terrorism in Kashmir; (ii) J & K State elections in 1997 and the return of the National Conference to power; (iii) setting up of two autonomous committees and their working; (iv) the Indian Parliamentary elections of 1996 with the formation of three successive short-term governments, which resigned for want of support, leading to dissolution of the Parliament; (v) fresh Parliamentary elections of March 1998 and renewed mass killings of the Pandits; (vi) formation of a new BJP led coalition government on March 15, 1998, headed by Mr A.B. Vajpayee; which exercised nuclear option through the hydrogen and nuclear explosions on May 11 and 13, 1998, at Pokhran. These invited severe criticism from west and nuclear powers and the UN Security Council, followed by Pakistan demonstrating its acquired nuclear capability on May 28 and 30, 1998, resulting in U.S. imposition of economic sanctions and insistence that India and Pakistan sign the CTBT unreservedly, and to engage in negotiations on all disputes including Kashmir; (vii) since both nations agreed to restart talks, it became necessary to rationalise and clarify the myths created by Pakistan, particularly on Kashmir, in the light of true facts, in order to help arrive at fair and realistic conclusions. The epilogue ends on a positive note, while cautioning against the outrage of India's sovereignty, unity and integrity and recommended patience and resoluteness in persuading Pakistan to agree to a permanent and peaceful settlement of all disputes.

The postscript at the end of the Epilogue updates the book to developments culminating in the Lahore Declaration of 21st February, 1999, between the Prime Ministers of India and Pakistan.



Important documents explaining and clarifying various constitutional provisions have been incorporated in appendices. Readers will find them useful along with the bibliography.

A sincere effort to place facts in the correct perspective, set the record straight and ensure cautious objectivity and probity, this book will interest students of Kashmir's history and Constitution, academicians, politicians and Kashmiri Pandits. I hope, in the context of the golden jubilee of India's Independence, it will contribute to a clear perception of what has happened and is happening in Jammu & Kashmir. It will be noted, that there has been an repetition of certain legal provisions and arguments, only with a view to making the points clear and to bring home the topic for easy understanding.

While I gratefully acknowledge guidance and help from numerous friends, I take full responsibility for errors, inaccuracies and misrepresentations which may have crept in, inadvertently.

What Kashmir needs, what Kashmiris wait for, is PEACE. This book is 'In Quest Of Peace', and it is fervently hoped it will prevail.

**R.N. Kaul**







## Chapter 1

### *The Kashmiri Pandit in Historical Perspective*

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Not much has been written about the origin, history and characteristics of Kashmiri Pandits — a community with a rich heritage and a glorious past, interspersed with oppression and degradation. More sustained efforts would be necessary to survey and deeply research the inheritance and enact the drama of the Pandits' remote past, to draw lessons from bygone days in the hope of a better future.

A beginning can be made with the *Nilmat Purana*<sup>1</sup>, a treasure-house of interesting and useful information compiled in Sanskrit between the sixth and the seventh centuries A.D. and the earliest source of social, cultural, religious and administrative knowledge of the Nilmata period. It shows that Kashmir was not only a beautiful piece of geographical territory, with its own cultural singularity but was a reservoir of thought and creativity which spilled over to India and countries beyond, contributing to some of the basic aspects of Indian civilization.

The *Nilmat Purana* contains absorbing details about the geography of Kashmir, the legend of the Satisar Lake and the creation of the Valley, the life of the Nagas and other tribes and the Saraswat Brahmins—ancestors of the Kashmiri Pandits, who were invited to Kashmir by Kashyapa Rishi. It has acquired a canonical authority for Brahminism in Kashmir, provides information on Vaishnavism, Shaivism, worship of the goddess Durga and suggests a high regard for the Buddha.

Relations among castes were harmonious. Degradation of castes and untouchability was not practised. Mobility existed



amongst the castes and inter-caste marriages were routine. The status of women was high, in personal freedom and civil liberties. People were friendly and hospitable; foreigners and immigrants were welcome. An authoritative source, the *Nilmat Purana* is replete with information about festivals, sacred places, pilgrimages, art and crafts, recreation, music, drama and dance. Rulers were hereditary and elected too. Mahayana Buddhism was born in Kashmir and Emperor Ashoka gave it full support. The 3rd World Buddhist Council was held by Kanishka in Kashmir and the doctrine was promoted by Kashmiri Brahmins and preached by them in China, Japan, Indonesia, Tibet and Central Asia where they undertook journeys on foot for the purpose. Guna Verma was outstanding in preaching the Buddha's message in Southeast Asia.

The fountainhead of Kashmir's historical past is the chronicle of Kashmir's rulers, entitled *Rajatarangini: The River of Kings*<sup>2</sup>, written in Sanskrit verse in 1148-49 A.D., by Kalhana Pandit, probably born in 1100 A.D., during King Harsha's reign and son of Campaka, a nobleman and minister. *The Rajatarangini*, in eight books, by a poet endowed with the acumen of a historian, contains details of the Vedic, Brahminical and Buddhist eras of Kashmir.

Kalhana ardently believed: "That a noble-minded poet alone merits praise, whose words like the sentence of a judge, is free from love or hatred, in recording the past."

Many western writers, including Winternitz and Will Durant<sup>3</sup>, have spoken of Kalhana, as India's greatest historian. Jawaharlal Nehru, in his foreword to R.S. Pandit's book titled '*Saga of the Kings of Kashmir*,' wrote: "It is history and it is a poem, though these two perhaps go ill together and in a translation especially, we have to suffer for this consideration, but otherwise we cannot appreciate the music of the poetry, the charm of Kashmir's noble and melodious language. It is a story of medieval times and often enough it is not a pleasant story. There is too much of palace intrigue and murder and treason and civil war and tyranny. It is the story of autocracy and military oligarchy. It is the story of the kings and the royal families and the nobility, not of the common folk. Yet Kalhana's book is something far more than a record of Kings' doings. It is a rich storehouse of information, political, social and to



some extent economic. Women seem to play quite an important part, not only behind the scenes, but in the councils and other fields, as leaders and soldiers. Warlords march up and down and wreak havoc on the people. According to Kalhana, "A country which delights in insurrection and people are exploited by the military leaders and adventurers, for their own advantage."

The *Nilmat Purana* and eleven other (not extant) sources were known to Kalhana, but it is not certain to what extent he relied upon them in preparing the *Rajatarangini* which chronicles the ruling dynasties of Kashmir from the earliest times up to 1150 A.D. Nonetheless, it is a literary masterpiece. Kalhana did not write fiction but a history of Kashmir of which a considerable part included an account of events witnessed by him, or those written within living memory. He seemed, however, to have rushed through (without revising his book VIII, the longest of the chronicles). His description of political and social conditions shows a high degree of credible accuracy and he did not hesitate to give his facts and opinions frankly on matters relating to the rulers or the people.

It may be of interest to refer to Kalhana's opinion of his compatriots. He believed that they did not show much physical and moral courage and their timidity and bragging were apparent. There was not much of individual or group resistance to violence and insurrection and changing of sides in a fight and treachery were known. They compared unfavourably with the foreign mercenaries employed by some rulers. In addition, the supervision and control of command mechanisms by the rulers was weak which led to loss of power at critical times. Organised priestly power impaired the political structure and it was not mobilised to strengthen and defend the kingdoms.

The story of the search for and acquisition of a reliable and critically correct Sanskrit text of Kalhana's *Rajatarangini*, the oldest and fullest record of Kashmir's history, is a fascinating one. The texts must have existed with Kashmiri and Indian scholars, in Sanskrit or Sharada, since early times. But European interest was aroused probably from 1664 A.D., when traveller-scholar Bernier wrote the first account of the Kashmir Valley and showed an



interest in its ancient history. Thereafter, many western scholars and researchers got involved in tracing old written manuscripts about topography, history and other aspects of Kashmir's life and its people and securing ancient, reliable texts for study. The search gathered momentum with the visit to Kashmir in 1875 of Prof Dr Georg Buhler (1837-1898)<sup>4</sup>, a prominent Indologist, Sanskrit scholar and professor of Vienna University.

A codex archetypus, supposed to be recorded by Rajanaka Ratnakantha, was recognised as the best source material for the study of Kalhana's *Rajatarangini*. Even so, to elucidate and fully comprehend the identity of local places and dates, assistance from Kashmiri scholars was required.

One such person, Sahib Ram Koul, whom Sir Auriel Stein, linguist, explorer and scholar refers to in his book, *Rajatarangini*<sup>5</sup>, as "undoubtedly the foremost amongst Kashmir's Sanskrit scholars of the last few generations", researched and abstracted in his Kashmir *Tirath Sangrah* (a compilation and listing of religious places) and helped him in identifying geographically important sites, religious places and establishing correct historical dates. After his death in 1872, Sahib Ram's son, Damodar Koul, won Prof Buhler's praise as a distinguished pandit, who enlightened and led him to the correct path, which had baffled the best pandits of India. (Then, there was Pandit Govind Koul, to whom Stein offers a debt of gratitude for all the help received by him). Despite recognition and credit for unravelling unknown and incomprehensible aspects of Kalhana's writing by the Pandit scholars in Kashmir, more importance is arrogated in English books to Buhler and Stein.

It is worth mentioning that Maharaja Ranbir Singh had directed Sahib Ram Koul to prepare a revised version of *Nilmat Purana* for publication, eliminating any grammatical errors, doubtful words and substitute omissions. Sahib Ram Koul did as desired, and Buhler in his report commented: "They (corrections) prove clearly that Pandit Sahib Ram's restoration is correct in substance and that Kalhana took some portions of his narrative literally from the Purana."



Yet, Buhler persuaded the Maharaja not to issue the revised text, but to continue with the so-called 'sacred' one, inclusive of its infirmities, perpetuating the lacunae and errors, and without clarification of obscurities, perhaps due to colonial prejudices or chicanery. An annotated version, notifying the exact changes, was also not recommended by Buhler even though Stein followed the same practice in his own English translation and comments on the *Rajatarangini*. Other future researchers could have been forewarned.

The oldest and the most comprehensive two-volume English translation of Kalhana's *Rajatarangini* is by Auriel Stein and incorporates an exhaustive introduction, commentary and appendices — first published in 1900 in London and reprinted in Delhi in 1961.

Ranjit Sitaram Pandit's translation of Kalhana's *Rajatarangini*, published in 1935, touched upon the literary, poetic and cultural aspects of the original, and proved to be helpful in popularising the recorded history of ancient Kashmir. Other efforts to publicise Kalhana's writings, however, did not gain much attention.

Kalhana's chronicles recorded Kashmir's history down to the year 1150 A.D. There was a gap till 1459 A.D. due to the difficult political situation, when Pandit Jonaraja wrote in Sanskrit verse in the tradition and style of Kalhana. On Jonaraja's death, four books titled, *Jaina Rajatarangini*, covering a span of 27 years up to 1486 A.D., were added by his pupil Shrivara. Then followed the last of the chronicles, begun by Prajabhatta under the title of *Rajabalipitaka*, which in the style of court historians, covered another 27 years (1486-1514 A.D.). Shuka, a pupil of Shrivara, completed this book, updating it to 1586 A.D., the year Emperor Akbar annexed Kashmir, and also called it *Rajatarangini*, thereby, ending the pathbreaking and glorious stream of Sanskrit historical verse in the River of the Kings of Kashmir.

The chronicles of Jonaraja and later writers are inferior to that of Kalhana and contain references to Muslim rulers. But for nearly 200 years after Islamic rule was imposed in Kashmir (1339 A.D.), Sanskrit continued to be the vehicle of communication in official



and literary circles. Persian, progressively became the preferred medium of the rulers.

The works of Jonaraja, Shrivara, Prajabhatta and Shuka were compiled, translated and published into a running three-volume abridged English narrative by Jogesh Chander Dutt under the title of *Kings of KASHMIRA*<sup>6</sup>, and issued in 1879, 1887 and 1889 (reprinted in 1890). Besides the historical chronicles, there were other Kashmiri writers and poets like Kshemendra (1050-90 A.D.), Bilhana (1063-89 A.D.), Mankha and others who provided useful information about the ancient times, places, religions and people of Kashmir. But there was nothing comparable to the traditional stream in Sanskrit verse from Kalhana to Shuka. Chinese, Arabs and Persians formed additional streams of ancient historical knowledge on Kashmir.

Ashoka (1182 B.C.), who founded Srinagar, was responsible for extending Buddhism to Kashmir. Kanishka followed in Ashoka's footsteps. Brahminism and Buddhism happily co-existed; the Buddha was revered. The Chinese records of the Tang Dynasty refer to Kashmir on the basis of information received from an envoy in 541 A.D. Ninety years later, Chinese pilgrim Hiuen Tsang<sup>7</sup>, visited Kashmir, stayed there for two years (631-33 A.D.), studied and arranged for the translation of several *shastras* (scriptures), accurately recorded topographical details and information on life and religion and noted the holding of the Third Buddhist Council during Kanishka's reign.

Chinese Buddhist Ou-Kong arrived in 759 A.D., compiled information on the monasteries and relations of the Buddhists with non-Buddhists, specially mentioning that Lalitaditya, a great ruler, who developed an amicable interaction with China, extended territories beyond Kashmir and died on his last campaign outside his realm.

The Arabic stream was led by Al Beruni (1017-30 A.D.), who, apparently was impressed with the personal touch and knowledge of the learned Kashmiri Pandits, and provided an accurate account of Kashmir, its people and its pilgrim places.

Abu-Fazl in his *Ain-i-Akbari* (1551-1602), referred to Kashmir's places of worship and centres of learning, coinage,



routes of entry and exit. He praised the Brahmins of Kashmir, and also its administrative divisions. Fazl mentioned that the whole country was regarded as holy ground by Hindu sages.

Ibn-Batuta (1304-1378), the greatest of the Muslim travellers, roamed India for 30 years from 1325 A.D., lived in Delhi for two years from 1333-1334 A.D., was appointed a Qazi in Delhi by Sultan Mohammad Tughlak, left for home due to indebtedness and loss of royal favour, and did not record anything worthwhile on Kashmir or its people.

Mirza Haider Dughlat's *Taarikh-i-Rashidi* in Persian (1815), referred to by Vigne (1842), is the only source which can be treated as a supplement to Kalhana's *Rajatarangini*. Sultan Zian-ul-Abidin had Kalhana's *Rajatarangini* translated into Persian by Mulkh Ahmed. But Malik Haider of Chadura's Persian chronicle (*Tareekh-i-Kashmir*, 1598 A.D.), was probably partially based on his personal knowledge of events and people and was updated to 1678 A.D., by his successor.

The Europeans followed. Beginning with Bernier (1665 A.D.), Cunningham, Drew, Jacquemont, Vigne<sup>8</sup>, Hugel, Elrasic, Knowles and others, who wrote about their travels to and in Kashmir, which were published.

Reference to the Pandit community also appears in books on Kashmir by Kashmiris written by Hasan Ali Kashmiri (*Tawarika-i-Kashmir*, 1616 A.D.), Mohd. Azam Koul (*Waqiat-i-Kashmir*, 1746 A.D.) and, early in the twentieth century, Mohd. Din Fauq or in 'Kashir' by Dr G. M. D. Sufi.

Similarly, useful information can be gleaned from the rather brief histories of Kashmir by the Kashmiri Pandits themselves, including Anand Ram Pehlawan, Birbal Kachru (1835 A.D.), Narayan Koul 'Ajiz' (1710 A.D.), or Har Gopal Kaul. In 1946, Gwash Lal Kaul's *Kashmir, Past and Present*, was published from Srinagar — a small but interesting book.

P. N. K. Bamzai's *A history of Kashmir* (1962), alongwith his three other books, provide an insight into the the ups and downs of Kashmiris in the course of their long history. The former was divided into three volumes, comprising the cultural and political



history of Kashmir from the earliest times, and was revised and reprinted in 1994.

The landmark was *The Kashmiri Pandit* by Pandit Anand Koul<sup>9</sup>, published in 1924 (Thacker-Calcutta). Though a volume of merely 150 pages, it dwells succinctly on the origin of the community, its religion and culture, customs and traditions, gotras and nicknames and other pertinent facts about their socio-economic and political role. The learned author, it appears, had expended energy fruitfully, to collect and verify relevant details on different topics and referred to the achievements of some members of the community, including the migrants, who acquired prominence in other parts of India. This pioneering work was reprinted but it was imperative that it be amplified and updated. It is gratifying that the late author's historian son (P. N. K. Bamzai) has completed a revised and enlarged version of this valuable book.

Late Justice Jia Lal Kilam's *History of Kashmiri Pandits*, published in 1955<sup>10</sup>, is the second book dealing exclusively with the history of the community. The author had gathered extensive historical material, sifted it and systematically presented it in the form of a running narrative of the different epochs, highlighting the role played by the Pandits and their contribution to the life and progress of Kashmir.

Justice Kilam showed a fine grounding on Kashmiri tradition and acquaintance with early sources of history. In his words, the objective was to show that "the small community could also hold its own against all odds, even under the most adverse circumstances, provided it equipped itself with those basic virtues which provide moral strength and, therefore, justification for it to live a life of self-respect and self-reliance." What emerges strikingly from this book is that there is much to be justly proud of and much to feel sad about.

*Aatish-e-Chinar*<sup>11</sup>, an autobiography in Urdu by the late Sheikh Mohd. Abdullah, appeared in 1986. Apart from references to the Kashmiri Pandits, the part played by their leaders and the Dhar family, Sheikh Sahib incorporated a special chapter (No. 73) titled, *Aan Brahman Zaaadeney Zindadil* translated as "that



vivacious Brahmin progeny", borrowed from a couplet from poet Iqbal, which offers a summary of the community's socio-political and historical role in different areas.

Even though laudatory of the Pandits' intellect and abilities, Sheikh Sahib expounded his views forcefully and sometimes vehemently on the religion, customs and traditions of the community, with whom he frankly admitted, he had both sweet and sour relations. His views on the Kashmiri Pandits' religion and customs, were unfortunately drawn from Mullah Mohsin Fani's *Dabistan-i-Mazahib* and not from authoritative and reliable sources.

Sheikh Sahib sadly dilated on the Pandits' alleged role as instruments of tyranny and oppression, or as informers. While one may not agree with Sheikh Sahib's opinions and observations and certainly disagree with some of his interpretations of history, many of the critical statements, coming as they do from a colossus of contemporary Kashmir (and a descendent of a Kashmiri Pandit), acquire special importance in so far as friendly relations with other communities are concerned.

Kashmiri Pandits should acquaint themselves with Sheikh Sahib's judgement in order to remove any misunderstanding caused as a result of the perpetuation of his views. Two pages of concise English translation by Khushwant Singh could not cover the full Urdu text of 22 pages of this special chapter, yet reference to important issues has been made here and there.

In 1987 and 1988 followed two books: *The Kashmiri Pandit* — a story of cultural choice in North India by Henny Sender (OUP), and *The Kashmiri Pandit* — the story of a community in exile by Kusum Pant (Allied). Both were exclusively devoted to the life and progress of the Kashmiri Pandits who had migrated earlier from Kashmir, and their descendants. Though brief in relating the circumstances and travails of their migration, these studies bring out the influences that operated upon them and their response to the new environment and their advancement, while retaining their old culture, customs and traditions. The authors propound that since the diaspora has taken the Kashmiri Pandits to distant places and



they have spread themselves thin, their future as a community is uncertain.

No doubt the Pandits are diminishing, particularly in Kashmir. The rate of decline in the Valley is precipitous while the population explodes all around India. Even so, with their innate conservatism, love for tradition and deep emotional attachment to Kashmir, they will hopefully be able to preserve their heritage. Kashmir's history is witness to their repeated phoenix-like rise from the ashes.

An informative and useful compilation of *Essays on Kashmir Pandits', cultural heritage*, a thick volume, edited by S. K. Bhatt (Lancer), appeared in 1995 and attracted attention. It included the various aspects of religious philosophy like Shaivism, Sufism, like the art and literature of Kashmir and a host of topics, contributed by Kashmiri Pandits.

The corpus of literature on Kashmiri Pandits is limited. The importance of efforts to research and reconstruct the past and to offer an authentic and balanced recapitulation of the Pandits' origin, formative years, religious, linguistic, ideological, cultural, social structure and patterns and economic and political involvement and evolution cannot be over-emphasised. The task is formidable, if not daunting. However, history, objectively written, is important not only for its own sake but for its contribution to human understanding and knowledge.

For a small and somewhat shrinking community, the Kashmiri Pandit should look back and ask what the past brought out and what in retrospect, the future holds for him, within and without Kashmir. Such reflection, based on historical reality, could help him in dispelling many misconceptions that have persisted for long, as part of his mental baggage, and steel him to come to grips with his harsh existence and an uncertain future. People who ignore their history, are forced to relive it.

Kashmir was known as *Sharada-Peeth*, a seat of Saraswati, the goddess of learning, "whose people loved learning and were well-instructed." "They produced great intellectuals and grand philosophers, historians, physicians and outstanding authors and scholars, whose reputation spread far and wide." "For upward of



2000 years", says Grierson<sup>12</sup>, "Kashmir has been the house of Sanskrit learning and from this small valley have issued masterpieces of history, poetry, romance, fable and philosophy." "For centuries Kashmir was the home of the greatest Sanskrit scholars."

Panini, the father of Sanskrit grammar, Patanjali of the Yoga Sutras, Charaka, the physician, and Kalidas (probably, a Kashmiri) are some of the leading lights on the Kashmiri intellectual firmament. People, it is known, came to Kashmir to seek knowledge and meet scholars and savants. Outsiders found Kashmir in the forefront in religion and culture and were impressed with the Kashmiris' religious tolerance and respect for the beliefs of others.

"The people of Kashmir love learning and are cultured. Since centuries, learning has been held in great esteem in Kashmir," wrote Hieun Tsang.

A thousand years later, Franco Bernier (1665 A.D.) recorded: "Kashmiris are celebrated for wit and (are) considered more intelligent than the Indians. In poetry, they are not inferior to the Persians. They are also active and industrious."

In the interregnum, internal degeneration and geographical isolation, foreign invasions and wars, coupled with natural calamities (earthquakes, floods, famines and epidemics) caused terrible upheavals, devastation, terror, misery, moulded the character of the Kashmiris and influenced their behaviour and way of life. They had to eke out a wretched existence, by means fair and foul. The pity is, much of the old learning and tradition "was destroyed as each dynasty came to power and did its best to obliterate that which its predecessors had created."

For nearly 600 years, the Kashmiri Pandits suffered terrible repression and oppression by, amongst others, the Hun, the Afghan, the Moghul invaders; their heirs, successors and governors, making life a veritable hell. The persecuted fled, time and again, to safety and liberty, and those who remained had to confront misery, exploitation, crippling taxes, ignominy and the devastating threat of conversion and execution. To refer to the ill-treatment and



subjugation they have undergone, might at this stage, revive and recall the distress and bitterness experienced. But to suppress or deny the tyranny the Pandits suffered through these turbulent centuries would be unfair and dishonest. In defeat, noble spirits soar; as theirs did. Yet, the debilitating affect of the ravages inflicted on the people's life influenced nineteenth century western travellers, like Moorcraft, Vigne, Drew, Wilson, Lawrence and others who lived in Kashmir and contributed to its social welfare as missionaries, educationists and doctors, to carry an impression of the Kashmiri's timidity, untruthfulness, maliciousness and enviousness. And the Kashmiri Pandits were made to share this assessment.

One sympathetic visitor, however, was generous enough to comment that "gradually Kashmiris are rising from slavery to manhood, though the growth is naturally very slow at present, but they are on the upward road." This is how Kashmiris were judged at one time.

But, who are the Kashmiri Pandits? Indigenous Brahmins from Kashmir, their descendants, the priestly and non-priestly classes, wherever resident, are pandits or Bhattas from Kashmir. Sheikh Mohmd. Abdullah stated in *Aatish-e-Chinar*: "The appellation 'Kashmiri Pandit' is a little over 200 years old. In fact, the decadent Moghul King, Mohd. Shah, applied it and that too at the behest of one of his courtiers, Jai Ram Bhan, a Pandit and forerunner of those who left Kashmir for patronage of the Moghul and settled in Delhi, Agra and other cities of India. These Pandits, by their God-given abilities, inveigled themselves into the good grace and favour of the Moghul. They considered themselves superior to other Brahmins. In order to establish their higher claims and status, a Royal decree (*Firman*) was issued, identifying and calling them Kashmiri Pandits. While the Kashmiri Pandits living outside Kashmir were designated as such, in fact, the distinction of insiders and outsiders, did not signify separation and all of them were generally described and defined as Kashmiri Pandits.

Prof Buhler<sup>13</sup>, published a fascinating and perceptive thesis on the Kashmiri Pandits in his report in 1877 on the basis of his tour of



Kashmir, Rajasthan and other places in search of Sanskrit manuscripts. He arrived in Srinagar in August 1875, and, with the help of the then Maharaja and his officials, met many learned Kashmiri Pandit scholars, had lengthy and fruitful discussions with them, and searched for Sanskrit manuscripts of enduring importance.

Prof Buhler's inquiries and studies started in the fields of history and geography of Kashmir and aided by his great fluency and deep knowledge of Sanskrit, he was able to resolve many problems relating to the correct understanding and interpretation of important dates, locations and events of the ancient period. It was Prof Buhler who guided Sir Auriel Stein on the critical principles applicable to the understanding and use of Kalhan's *Rajatarangini*. The thesis on Kashmiri Pandits in the Buhler Report is of perennial interest and is excerpted. It comments on many other topics, including the origin of Kashmir and the Kashyapa story.

"All the Sanskrit-speaking Pandits, as well as some of the traders and officials, possess large and small libraries", Prof Buhler said. The process of preparing *bhojpatra* manuscripts and writing inks is discussed. Buhler refers to ancient Sanskrit texts by famous authors like Kalhana, Kshemendra, Srivara Kalidasa, Bana, Mankha and others from Kashmir. The extracts conclude with a review of the Kashmiri language and its peculiarities, that students of linguistics would find doubly rewarding.

The extracts (13) begin thus:

"The Brahmins or Pandits, as they are usually called, are the only natives of Kashmir who have preserved their ancient faith, while all the other castes have embraced Mohammedanism. Their number probably does not exceed 40,000 to 50,000. Babu Nilambar Mukarji told me that a late census of the town of Srinagar had shown 24,000 for the city, and that the remainder of the country probably did not hold more than the same number. The capital is their chief seat. Smaller colonies are, however, found in the larger towns, e.g. Islamabad, Anantnag, Bijabror, Vantipur, Pampur, Sopur, Baramulla, as well as in many villages, such as Khunmoh, Yechgam, etc., and at all the numerous places of pilgrimages. Unlike Brahmins



from other parts of India, they form one single community. While in Maharashtra we have Desasthas, Konkanasthas, Karahasthas, and Karnatakes and while Gujarat holds more than seventy distinct Brahminical tribes, all Kashmirian Pandits call themselves simply Kasmirikas, and consider themselves to be a branch of the Sarasvatas. This is so much more remarkable as originally they came from different parts of India. The *Rajatarangini* mentions several immigrations of Brahmins from Gandhara-Kabulistan, from Kanauj and even from the Telingana country, while from other sources we learn that Gauda and other parts of India contributed settlers. The remembrance of this separate origin survives to the present day. One Pandit informed me that he possessed proofs of his ancestors having come from Gauda, and others mentioned that the original Kashmirians were distinguished from the immigrants by the performance of certain ceremonies on the occasion of the *malmasu*, i.e., the month in which no full moon occurs.

"But inspite of this difference in origin, all Pandits form one community, and are willing to eat with one another (*annavyavahara*) and to teach one another (*vidyaavavahara*, *vidyasambandha*). The third mark of perfect equality, the connubium (*Yonisambandha kanyavyavahara*) does not exist among all of them. In this respect they are divided into two halves, the aristocracy and the common herd. To the former belongs, firstly, a small number of particularly respected families, 30 or 40 according to my information, who have kept up, and still keep up, the study of Sanskrit, and live on Inams, allowances from the Maharaja, and on fees which they receive for officiating as *acharyas*, or superintendents of ceremonies before the domestic fire, and of *sraddhas*, or sacrifices to the manes, and of the *Saiva* worship.

"The other members of the aristocracy are the officials and the great traders, who have left off the study of Sanskrit and taken to Persian. The plebs are composed of the so-called *Bach-Batta*, said to number 1,200 families, who earn their livelihood as performers of manual work at the various ceremonies, as



copyists, and as priests at the *Tirthas* — or places of pilgrimage. The latter are, however, considered to rank a long way below the *Bach-Bhattas*. When I first inquired into the relations between these several sections of the Kashmirian Brahmins, I was told that the Sanskrit-studying and the Persian-studying Pandits did not intermarry. Later my informants recollected cases of marriages between children of officials and of the men of the *Sastras*, and they modified their statements accordingly. At the same time they denied most emphatically any connection by marriage between the *Bach-Bhattas* and the *Trithavasis* on the one side, and themselves and the officials and trading Brahmins on the other. One Pandit even went so far as to say that they would die rather than give a child to such a person.

“Similar divisions as regards marriage exist in many Brahminical communities in India. They are frequently divided into *Grihastias*, house-holders, that is, inamdars, officials, money-lenders, and traders and *Bhattas* or *Bhikshukas*, persons who officiate as priests for money and reciters of the *Puranas*, etc. I may mention the Nagaru Brahmins, the most important section in Gujarat, as an instance to the point, for which I can vouch personal knowledge.

“The unity of the Kashmirian Brahmins, comes out very strong in their Vedic learning and in their *achara*, or rules of conduct. If asked about their *Veda*, the usual answer is that they are Chaturvedis, students of the four Vedas, and adhere to no particular Sakha, or redaction. Many of them are also able to recite small portions of all the four sacred works. Their *grihya* ceremonies are performed according to the *sutra* or aphorisms of the Churuyaniys-Kathaka school, which are attributed to the Rishi Laugakshi. These alone are recognised as the true norm and the source of the *achara*, and no other *sutra* on the subject is used, or even known in Kashmir. This latter circumstance induces me to conjecture that the real *sakha* of the Kashmirians is the *Kathaka*. For though a Brahmin is entitled to study all the four Vedas and gains great merit by doing it, and though



*Dwivedis*, *Trivedis* and *Chaturvedis* — students of two, three, or four Vedas — were in former times numerous, and are still met with occasionally, still there is a special injunction of the *Smriti* which commands that every Brahmin is to perform the *grihya*, or domestic rites, only according to the particular redaction of the *Veda* which is hereditary in his family, and which he has received from his teacher. The Kasmirian Brahmins may, therefore, in olden times, have studied all the four *Samhitas* and nevertheless be members of the *Kathaka* school. Several Pandits to whom I communicated my view, approved of it.

“The *achara* of the Kasmirians agrees in most respects with that of the Indian Brahmins, but shows also some very remarkable peculiarities. The daily rites of worship, such as the *sandhya*, the morning and the evening prayers, as well as rites for particular occasions, the *sanskaras* or sacraments, are performed more or less scrupulously. The true Pandits carefully keep to the prescribed times and seasons, while the official and trading classes are more lax. With the latter it is not uncommon to delay the performance of the *sanskaras*, and to get over all of them just before marriage, on which occasion the *prayaschittas*, or penances for the delay, are likewise duly observed. Similar methods of accommodation also prevail in India proper.

“It is the pride of the Kasmirians that the *sraddhas*, the oblations to the manes, are performed in their country more carefully than anywhere else, and they state that all the sacrifices which the *Smritis* mention are offered in their country. Both the Pandits and a *Bach-Bhattas* also state that the *sraddhas* are one of the chief sources of income for them. The Pandits, and *Bach-Bhattas* also state that they carefully observe the *vratas*, fasts and other usages enjoined for particular days. At least, my acquaintances were all in a deplorable state of weakness, on the *ekadsi*, the eleventh of each lunar month. But, I am unable to say if the secular portion of the Brahmin community, follows the rules of the *Sastras* with equal strictness.



“The performance of the *prayashittas*, or penances, for breaches of the commandments of the *Smritis*, is looked after by the Government. The Maharaja himself, who is a sincere and zealous adherent of the faith of his forefathers, sees that Brahminical offenders expiate their sins in the manner prescribed by the *Sastras*. The exact nature of and amount of the penances, is settled by five Dharamadhikaris, who belong to the most respected families among the Sanskrit learning Pandits. The office is hereditary in these families. *Rahasyaprayaschittas*, or secret penances for offences not publicly known, which are either self-imposed, or imposed by heads of families, also occur. While these practices agree with the customs of the Indian Brahmins, and are in accordance with the percepts of the *Smritis*, there are also some peculiarities which distinguish the Kashmirians from their Indian brethren. “The first point of difference is their dress. Contrary to the customs prevailing in India, the chief garment of the Kashmirian Pandits, is a large woollen mantle of grey colour. In the case of poor men, this is the only garment besides the *langoti*. Well-to-do people wear in summer, cotton, in winter woollen under-clothing, resembling our shirts. It is said that the mantle is a development of, or rather refinement on, the ancient kambala or woollen plaid, which the *Smritis* allow, and that in former times, a simple blanket with a hole which was burnt with a hot stone to put the head through used to do duty for the mantle. Some Pandits asserted that King Harshadeva, 1089-1101 A.D., whom the *Rajtarangini* too mentions as a reformer of dress, introduced the present fashions.

“Another custom peculiar to the Kashmirians, is the wearing of the *mekhala*, or Brahminical girdle, with which the young Brahmins are invested at the *upanayana*, on their reception into the community. In India proper, I have never heard of any Brahminical tribe that observes this ancient custom. The *Jenui*, or sacrificial string, has entirely usurped the place of the *mekhalas*. In many districts it is customary to call *upanyana*, the *jenui* ceremony; and where the children, on being formally



received into the brahminical community, are still invested with the girdle of *kusa* grass. It is laid aside immediately after the performance of the ceremony. In Kashmir, on the other hand, Brahmins wear both the *mekhala* and the *Jenui*, the former round the waist, and the latter over the left shoulder.

“The Kashmirian turban consists of white cotton cloth, and is narrow and flat, somewhat like that of the Surat Nagar Brahmins. The shoes of the richer ones, are of leather, and sometimes embroidered with silk; those of the poorer class are made of grass, just as those which all the hillmen wear. None of the Pandits whose acquaintance I made wore any earrings. But I must confess that I forgot to ask if instances of this general Indian custom were met with. I cannot conclude this note on the dress of the Pandits, without a remark on the toilette of the Brahmins, or Panditanis, as they are usually called. They too wear grey mantles, like the male members of the community, but the monotony of the colour is relieved by large cuffs, which are sometimes pink and sometimes white, and not infrequently by a sash round the waist. The head is covered by a white veil, which hangs down over the back and shoulders, but leaves the face free. The hair is divided, as in the case of all Kashmirian women, into numerous small braids; the most remarkable ornaments, are enormous pendants hanging down below the ears, attached not to the ear, but to a string which passes over the head. The women of the poorer class, the only ones who are visible to strangers, go barefoot.

“Another peculiarity in the *achara* of the Pandits, is the universal consumption of meat. All eat mutton, goat’s flesh, and fish. But they obey the usual restrictions of the *Sastras* as to beef, pork, and the meat of other forbidden animals. They, usually declare that the custom of eating meat is based on a *desaguna* ‘a virtue of the country’, and that they leave it off as soon as they descend into the plains. They also fully acknowledge the duty of *ahimsa*, of preserving life, and are themselves by no means willing to kill anything. If told that their acts are not consistent with their professions, they answer



that their abstaining from meat would not prevent the slaughter of animals, as the Mohammedans of the country would still require meat. There can be little doubt that the practice of eating meat has come down to the Kashmirians from the most ancient times. It prevails to a much greater extent in northern and Central India, than is generally known.

"In the Punjab, the N.W. provinces, Rajputana and in parts of Bengal, all *Saiva Brahmins* eat meat, and frequently drink spirituous liquor, while the *Vaishnavas* are strict abstainers. My Kashmirian acquaintances most solemnly denied that they took wine or other liquor. But I have my doubts on the subject. At all events, the *Nilamat Purana*, which prescribes the drinking of new wine on the day when the first snow falls, and the *Saiva Agamas*, which frequently mention the *sura-paana*, show that formerly the custom did exist. A natural consequence of the practice of eating meat is that at the *Varshika Sradha*, the anniversary funeral sacrifice, the *pindas* offered consist of meat.

"As regards their *Bhakti* or worship, nearly all Kashmirians are *Saivas*. A few families only are *Saktas* and adherents of the left-hand or evil path, *Vamapanthis*. There are also a small number of *Vaishnavas*, descendants, I was told, of people who were converted in the Punjab. In ancient times too, the prevalent faith in Kashmir was *Saivism*, but *Buddhas* and *Bhagavata-Vaishnavas* too flourished.

"Kashmirian Saivism did not and does not content itself simply with the worship of *Siva* emblems, as is the case among the *Smarta Brahmins* in Maharashtra and Gujarat. It is a real separate religion, with peculiar ceremonies and sacrifices and transcendental doctrines. There exists, for those who are willing to enter it, a regular order for which a special initiation, both by a *mantra* and a *diksha* consisting of complicated ceremonies, is required. The *mantra* is frequently given first and the *diksha* years afterwards. The rites to be performed at the latter are numerous and are described in the *Kaladikshas* of the Government collection. They are *Tantric* imitations of the



*Vedic* rites. The gurus are those Sanskrit-speaking Pandits who have been initiated. *Saivas* appear to modify their *Vedic*, daily and occasional rites by adding new *tantric* ones, for which the *Kriyakanda*, or *Somasambhu* is the guiding authority. My acquaintances were either unable, or unwilling to tell me the purpose of their *Saiva* mysteries. They said that they did not consider them to be a special road to heaven or to final liberation, nor did they have any sanctity. But they thought that it was better to be initiated, as it had been the custom of the country from time immemorial.

"In former times, both the Kashmirian *Saktas* and the *Saivas* were famous for their proficiency in the black art. The *Rajtarangini* mentions this point more than once, and states that several kings, e.g. Chandrapida, were killed by means of sorcery (*abhichara*). Now it is said that only a few *Abhicharikas* exist, and that these carefully hide their art, as the Maharaja is much opposed to them and punishes them. From a story told to me, it would seem that some of the rites which the Kashmirian sorcerers used to practise closely resemble those formerly known in Europe. A *Pandit* stated that he had once found amongst some old lumber, a small wooden statue, through the neck of which a pin had been driven. The pin driven into the neck under the recitation of the proper *mantras* had caused headaches and speedy death by apoplexy. I suppose nobody will read this story without being reminded of the Leech of Folkestone in the Ingoldsby Legends, where the sorcerer and the wicked wife try to destroy Thomas Marsh by exactly the same means. It may be that witchcraft is now not much practised in Kashmir, but the belief in its efficacy, by yoginis who celebrate their foul rites on the desert mountain sides, and in Bhuts, is perhaps stronger and more universal in Kashmir than in India proper. The Kashmirian Pandits gave me the impression that they were a *gens religiosissima*.

"Sanskrit learning in Kashmir is not as flourishing as during the times of the native kings, when, as Bilhana boasts, even the women spoke both Sanskrit and Prakrit. But still there are



some remnants of the former glories which have survived the long period of Mohammedan oppression. I have already mentioned that the Sanskrit classes of the Maharaja's *Mudrissa*, in which poetry, poetics, grammar and philosophy are taught, are in a very fair condition. Among the older men I met, about a score could talk Sanskrit fluently, if not grammatically, and all were able to compose a few slokas, which they presented at the first meeting. I cannot say that the quality of the Sanskrit spoken or written was good in general. The niceties of Sanskrit grammar, such as the distinctions between the set and anit roots, seldom received due attention. A great confusion between the masculine and neuter genders was also observable. Mistakes of the latter kind are owing to the influence of the Kashmiri language, which, like *Sindhi*, has only one form for the masculine and the neuter. The influence of the country dialect has also affected the pronunciation in a very high degree, so that during the first days I found great difficulty in making out what my visitors said. On the first day, when examining the *Mudrissa*, I found it impossible to follow the recitation of the *Kavyas* without a book in my hand. After a few weeks' practice, the ear became more accustomed to the strange sounds.

"The chief peculiarities of the Kashmirian pronunciation are:

1. Medial and initial *ā* is pronounced like the English *a* in call, fall, etc.
2. Medial and initial *becomes e or ye.*
3. Final *i* and *i* are pronounced like the German *u*.
4. Initial *u* always becomes *vo*, the *o* being sounded like the English *o* in god.
5. Medial *u* is sometimes sounded like *ou*, e.g. in *Kulya*.
6. Initial *u* becomes mostly *vu*.
7. The vowel *ri* sounds like *re usually*, but sometimes *ru*, e.g. *kresna & krusna*.
8. *E* is invariably pronounced like *i* or *i*, or like *vi*.
9. *O* before nasals and liquids is pronounced *ou*, and with difficulty distinguished from *U*.



10. Instead of the aspirates, the corresponding unaspirated letters are usually pronounced.
11. The group *ksha* becomes invariably *khye*, e.g. *kahamyatam*, *kyemyatam*.
12. *She* is never used; its usual substitute *sa* is sometimes interchanged with *sa*.
13. *Visarga* is sounded very soft, so as to be almost inaudible.

"If to these peculiarities, the common Indian threefold pronunciation of *a* as *\_a*, *o*, as well as the indistinctness of all the vowels in these, are added, it may be easily imagined how difficult it is for a stranger to understand a Kashmirian, especially when the speaker becomes excited and, in consequence, careless in his pronunciation.

"I considered myself very fortunate that my ear accustomed itself to the new sounds in the course of a fortnight. Babu Nilamber Mukerji, who is an excellent Sanskrit scholar, and, for a Bengali, pronounces Sanskrit with remarkable purity, told me that he, though a resident in Kashmir for many years, was frequently unable to make out what the Pandits said. The Pandits themselves seemed to have no difficulty in understanding me or the Babu, and they freely acknowledged that their Sanskrit pronunciation was bad and corrupted by their vernacular. A knowledge of these Kashmirian peculiarities is of the greatest importance for students who use MSS from Kashmir, as they explain a great number of mistakes. This occurs frequently for *u*, *e* for *i*, *da* for *Dha*, *be* for *Bha*, *ga* for *gha*, and *kkhya* or *khy* for *ksha*. These peculiarities must also be kept in mind in reading Kashmirian transcriptions of foreign names. Thus *Mera*, which so frequently occurs in the *Rajtaranginis of Jonaraja and Srivara*, must always be pronounced *Mira*, as its identity with the Persian *Mir* requires.

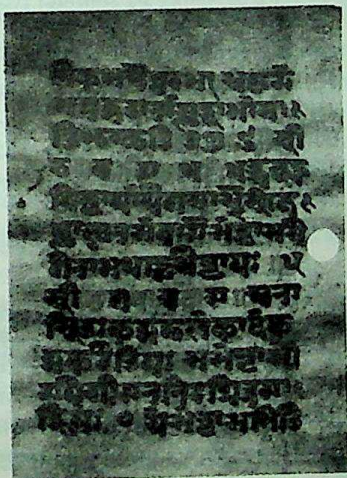
"As regards the present state of literacy activity, I can say that I saw one really distinguished Pandit who would be able to hold up his head anywhere, Damodar, the son of Sahib Ram<sup>14</sup>, the chief teacher in the Maharaja's Madrasah. He possesses all the



characteristics of a true Kashmirian scholar, great quickness and sharpness, a considerable fund of good natured humour, an inexhaustible flow of eloquence, combined with a thorough knowledge of Sanskrit poetry and poetics, and a very respectable knowledge of grammar, of *Nayaya* and of *Saiva* philosophy. He explained to me several verses from Sanskrit poets which had baffled not only me, but also some of the best Pandits of India. His own poetical compositions, (continuation of the *Rajatarangini*) and a letter-writer's, entitled *Praudhalekhah*, which he was good enough to read and to explain to me for hours, certainly surpass Sriharsha and Bana, and can be only compared to Subandhu's *Vasavadatta*."

It is hoped that Dr. Buhler's account will be found both informative, interesting and acceptable as a fair view of the Kashmiri Pandits background in religious and social beliefs, rituals and way of life, as revealed to him 122 years ago in Kashmir.

#### A page from the Bhagwat Gita in the Sharada Script of Kashmir



The Script, named after Sharada-bhumi (Kashmir's ancient Sanskrit name), is its oldest, and evolved around the 6th century AD, for writing secret lore and literature in Kashmir. It spread to the neighbouring Himalayan regions and Tibet. Though the Script is getting obsolete for want of official and non-official support, efforts are now under way to revive it.

Sharada Script is also related to the Brahmi Script of the third century BC. The first Kashmiri

version of the New Testament in Sharada was published in 1821 by the Baptist Mission in Calcutta.

(Photo : Courtesy N S Kashmir Research Institute)



## Notes

1. *Nilmat Purana*, though not one of the 18 basic Puranas, is treated as such in view of the declaration in its colophon. Its importance is brought out by commentators due to the wealth of information about Kashmir's past and the numerous references by Kalhana in his *Rajatarangini*, a great record of Kashmir's social and political historiography. Prof. RL Kanjilal and Jagadhar Zadoo edited and published the first English edition of *Nilmat Purana* in 1924; followed by Dr Vrecc in 1939. Dr Ved Kumar's two volumes, the first, a cultural and literary study and the second, a Sanskrit text with English commentary, appeared in 1968 followed by a second edition in 1986.
2. Kalhana's *Rajatarangini - Saga of Kings of Kashmir*, by R.S. Pandit. Foreword by Jawaharlal Nehru.
3. The story of civilisation - by Will Durant - Vol I. The Oriental Heritage, Page 579.
4. Dr George Buhler's, *Report on Search of Sanskrit MSS, in Kashmir etc.*, published by Royal Asiatic Society, Bombay, 1877.
5. Kalhan's *Rajatarangini* by Stein - Vol II, Chapter II, Section VII. Para 34, Page 383, regarding Sahib Ram.
6. *Kings of Kashmira*, translated by JC Dutt in 3 volumes, reprinted in 1992, Calcutta.
7. *Life of Huein Tsang* by Shamans Hui Li, (translated by Samuel Real Linda, 1888).
8. *Travels in Kashmir*, etc., by G.T. Vigne, 2 volumes.
9. *The Kashmir Pandit* by Anand Koul.
10. *A History of Kashmiri Pandits* by Justice JL Kilam, 1955.
11. *Aatish - e - Chinar* by Sheikh Mohammed Abdullah - Urdu, 1985. Chapter 73, pages 883-4. Summarised English version by Khushwant Singh.
12. *Linguistic Survey of India* - Report by Sir George Grierson. (Vol-VIII).
13. *Buhler's Report*, pages 19 to 26.
14. Saheb Ram Koul (died 1872) wrote 9 books on different subjects, including an abstract of *Kashmir Tirath Sangrah*. Five are preserved at Ranbir Sanskrit Research Library, Jammu and four at the Sanskrit Manuscript Section of J&K University, Srinagar. His *Niti Kalplata* on polity was translated into Hindi in 2 volumes by Dr Dharma Dass Shastri in 1990. (The present author happens to be a fourth generation direct descendant of Sahib Ram Kaul.)



## Chapter 2

### *Emigration and Exile*

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Historical records testify to the divine advent of the Pandits into Kashmir at the invitation of Kashyap Rishi; their peaceful and spiritually satisfying life through generations and contributions to the religious, social, cultural and economic evolution.

Ancient Kashmir displayed deep religious tolerance for all philosophies and faiths and welcomed the Pandits, who got absorbed in the prevailing social milieu. Even so, the Pandits, since pre-mediaeval times, have had to encounter numerous invasions accompanied by strife, intolerance and religious persecution of an intensity their collective consciousness could neither erase nor negate and, the tragedy is, that some of the tormentors during the pre-Islamic eras were Hindu rulers.

The Pandit was a prisoner of the past and his attitudes on religion, philosophy, politics, economics and society have been conditioned by force of circumstances. He has unconsciously nurtured glorious visions of his great heritage, religious splendour, socio-cultural superiority and even administrative supremacy, and these dreams seem to pervade despite often unequal and repeated confrontations at various social and political stratas. This has manifested itself in serious problems of self-identity, dignity, safety and repeated onslaughts, leading to conversion, capitulation and emigration.

To those who succumbed to conversion, the adversary ruler's patronage provided some relief in terms of politico-economic benefits, made available to the converts and in partaking of other allurements. The vanquished, striving for physical and



psychological rehabilitation and economic betterment, had limited options; retirement into a nondescript shell, self-repudiation and wholesale imitation, courses pregnant with degradation and deprivation.

Emigration, as an escape, was fraught with enormous risks — on exit, in transit and upon new settlement — besides, the emotional trauma inherent in leaving hearth and home, kith and kin, tradition, inheritance, the lands of one's forefathers and the hallowed portals of saints and gods. History, geography and economics, unfortunately conspired to present limited choices to the Pandits, some of whom braved great odds and managed to depart from the Valley for safety and dignity elsewhere. Many, tragically lost their lives in the process. Inevitably, those who left Kashmir carried unforgettable memories, pleasant dreams and nightmares, which remained vivid and found strong historical linkage to the epochs to which the departing Pandits belonged.

In this perpetual exodus, despite adversity and bitterness, strong pro-Kashmir sentiments persisted amongst the diaspora, uniformly and unexceptionally. For them, Kashmir was always home and will remain home with unbroken emotional links. Many of their poets sang to that effect and publicly avowed such faith. They love to think of their return some day, if only for a short time, to savour its natural and other offerings, its history, tradition, culture, religion; have the gratification of contacting their long-lost kin and the satisfaction of touching their own roots, irrespective of difficulties, frustration and indignities.

In saying *au revoir*, they had always wished Kashmir well, irrespective and unmindful of who inherited it. Again, many of the diaspora being more prosperous, talented, worldly-wise and successful, were sincerely and emotionally keen and willing to help Kashmir in whatever way they could, if only to repay their psychological debt to the land of their origin. Drawing lessons from their own successes elsewhere, they saw no reason why Kashmir should not be prosperous. But alas, local suspicions and uncalled for fears, bigotry and short-sightedness, prevented them from providing a helpful hand.



The Pandits, an endangered community, dwindling in numbers at home and elsewhere (despite world-wide increase in population), have shockingly found themselves with accentuated deculturisation and an unfavourable socio-political environment in Kashmir, in serious danger of losing their identity and place under the Kashmiri sun. In this context, it would be worthwhile to deliberate upon the saga of their exodus and explore lesser known (and scant) mythological, historical and contemporary sources, in order to seek guidance, inspiration and direction for the future.

To dramatise the contextual impact and relevance, a few vignettes, drawn from quasi-historiography, could present a picturisation of some of the past events, giving the feel of a cinematic playback. Naturally, it would have to be a sombre effort, reflecting upon the socio-political mindset of the Kashmiri Pandit. Though religion and religiosity have been the dominant factors in their lives, yet what should draw our attention should be the socio-political aspects of their existence. The exiles, nonetheless, have borne no bitterness in their hearts and carry no hatred for their oppressors, rather have recognised kinship.

The story of the migration of people, especially minority communities, and how they overcame insecurity, hardship and prejudice in the lands of their adoption, with a vastly different environment, is undoubtedly fascinating. While the Pandits<sup>3</sup> arrival was marked by ethno-cultural, socio-economic and political pressures, their survival was the result of hard work, tenacity of purpose and the will to succeed at all costs. Striving to adapt and adjust to the conditions in host societies and to integrate with and belong to them, their cultural and other characteristics singled them out as a distinct and recognisable group. They carried with them special mental and physical traits which they could not shun. They made use of the opportunities available to them, despite early difficulties, discrimination and deprivation in their struggle for success, which provided a strong motivation for them. They had turned their back against what they had forsaken and they dared not return in failure.

History has shown that many of them achieved positions of leadership and high distinction, while others fulfilled a variety of



outstanding roles in their new homes. But the truth and the tragedy of their exodus did not resonate through the world as it has done in recent times.

A study of the exodus of Pandits has unfathomed many interesting and remarkable facts relating to one of them — Mohanlal Kashmiri — whose exploits came to light in the middle of the nineteenth century and stirred the imagination of many young people. However, Mohan Lal was neither typical nor unusual. Though there are gaps in the recorded history of his life and that of his ancestors, some of the known facts present a most interesting and variegated picture of the times and could be educative for later migrants. To quote Justice Campbell, they would “rule by the brain, and the pen and not by the sword — they are perfectly versatile and would mount a horse, gird a sword and assume at a push, a semi-militancy air.”

This is the story of a Kashmiri boy, Mohan Lal, who left his Delhi home at 16, educated himself, grew into a polished linguist, an intelligence officer, a shrewd negotiator, diplomat, royal emissary, writer, probably married 17 times, became a hero and a victim in the great game of powers in Central Asia, and went into oblivion in his thirty fifth year, devoting his time to writing his diary in some 1,000 volumes, which his family, in penury, sold to an American in Calcutta. Nobody seems to know where these are now.

In 1940, Jawaharlal Nehru<sup>1</sup> commented: “Here was a person, full of the spirit of adventure, to whom adventure came in full measure, before he was out of his boyhood. He did not shirk it, but welcomed it and wrote about it, so that others might share it with him. Danger and difficulty were his constant companions and disasters sometimes overwhelmed his party. But he never seems to have lost his resourcefulness, and his quick mind and soft tongue were equal to any occasion. He had an amazing aptitude for the ways and intrigues of diplomacy and it is astonishing how he could win over even hardened opponents to his side. In a free India, a man like Mohan Lal would have risen to the topmost rungs of the political ladder. There was apparently no place or activity suitable for him in India and he must have lived largely in the past, where he was the honoured guest of the rulers of Asia and Europe, or when



he was a central figure in a stirring drama of life and death. Probably the very prominence that came to him early in life, became an obstacle in later years. Mohan Lal's later years were pathetic and depressing. Having accustomed himself to an expensive standard of living, he was continually in debt and sent appeals to the British authorities for help and compensation for the money spent by him during the Kabul campaigns. These appeals were rejected."

Mohan Lal was a descendent of the Zutshi clan of Kashmiri Pandits but nothing is reliably known about when and who among his ancestors had migrated from Kashmir. His great grandfather was Pandit Mani Ram, who came to hold an important position at the Delhi Court as an adviser to the Mughal King Shah Alam II (1759-1806 A.D.). The King bestowed upon Mani Ram the title of 'Raja' and a jagir worth Rs 20 lakhs with an annual income of Rs 40,000. Raja Mani Ram had three sons, one of whom was Shambu Nath. To the latter was born a son, Rai Brahm Nath, affectionately called Budh Singh, probably by a Sikh nanny. This name got stuck to the boy. Rai Budh Singh had two sons, Mohan Lal alias Ram Nath and the younger, Kidar Nath. Their mother was a Kaul from Gwalior.

Rai Budh Singh lived extravagantly and squandered his family wealth. However, well-versed in Persian, he took up employment as private secretary and interpreter to Sir M. Elphinston (later Governor of Bombay), and went to Peshawar with him. He retired from his post in 1809 and did not encounter any ostracism from his community for having lived amongst Muslims in the then Frontier Province. One wonders whether it was his status, his name, or his silent avowal of orthodoxy that saved him.

In 1824, Governor General Lord Dalhousie, under what was called the Doctrine of Lapse, annexed territories of tributary or interstate ruler states, resumed and confiscated jagirs bestowed by Mughal rulers and lands granted to the family (and many other recipients), which then became parts of British territory, depriving them of their main source of income.

In addition, due to a quarrel with the Nawab of Delhi over a songstress friend, Rai Budh Singh's estates in Ferozepur and other



places, were seized by the Nawab. The family, used to a life of ostentation, ran into deep debt and was reduced to indigence. Rai Budh Singh also had a daughter from his concubine, who was married off to one Mr Hodges.

Raja Mani Ram's descendents lived in *Bazaar Sita Ram*, Delhi, and it is here that Mohan Lal was born in 1812. Brought up in an aristocratic and highly cultured family, the boy received Urdu and Persian education at home, quickly acquired proficiency in the languages and a fluency that was the envy of those who came into contact with him. Proud of his Kashmiri lineage, Mohan Lal loved to call himself Kashmiri or Kashmirian.

The old Persian College of Delhi, founded in 1872, had, for want of financial support, come near closure. It was revived by the British in 1823, and renamed the Delhi College. Five years later, the first English classes were started. Mohan Lal joined the college in 1829; the first Kashmiri Pandit to study English, and completed the course in 1831, standing first in the class. His classmates were five, including R. K. Haksar, another Kashmiri, and Shahmat Ali, who later became Prime Minister of Indore. The institution was rechristened St. Stephen's College in 1881.

Russia's active interest in India began in 1801;<sup>2</sup> Czar Alexander I and French Napoleon Bonaparte of France agreed to collaborate in what came to be called the great game or *Bolshaya Irga*, to reach India. The French offered 50,000 troops. Missions were sent to the Shah of Persia and the Amir of Afghanistan, through whose territories the invaders would move. However, Alexander and Napoleon fell out and France attacked Russia. The French were beaten and Russia was emboldened to proceed alone to checkmate the British, who, the Czar feared, aspired to include the Central Asian Khanates in their empire.

At the beginning of the nineteenth century, the Russian and the British empires were separated by 2,000 miles. To stake their claim, the Russians advanced at about 55 miles a day towards Khiva, Bokhara and Khotand, shrinking the distance to a few hundred miles; rattling the British and succeeding France, in the early nineteenth century, as the bugbear of the British in Persia and Central Asia.



The outbreak of active hostilities between Amir Dost Mohamed Khan of Kabul and Maharaja Ranjit Singh appeared imminent. The Persians were not too friendly. The alarmed British decided to send a mission to Afghanistan to seek support and minimise the creeping influence and advance of Russia towards India. The situation was complicated and called for the highest political skills and most astute diplomacy.

Mohan Lal, fresh from college, joined the British service in 1831, which entailed travel outside India, particularly to Muslim countries. With his fluency in Urdu, Persian, English and Hindi, he was seen to possess unique qualifications for his job. It is certain that with his background and education, he could have had a decent living in India, without having to go abroad, particularly to Muslim countries. Diwan Ajudhia Prasad, a leading Pandit, tried to dissuade Mohan Lal from going to the forbidden lands, but in vain.

Mohan Lal commented later: "I refused all his requests as I was very anxious to visit the Mohammedan and Russian countries." It appears his enthusiasm was in some measure influenced by Western education, zeal for social change, love of adventure, and perhaps, financial considerations.

A British Mission<sup>3</sup>, ostensibly for commercial purposes (but in reality with diplomatic objectives), was organised and it was led by Sir Alexander Burnes, a Persian scholar and former Assistant Resident, Cutch, with Dr Gerard of the Bengal Medical Service, as a member. Mohan Lal joined them as Mir Munshi (Chief Clerk) on a salary of Rs 1,000 a year — a princely wage for Indians in those days. His duties included collecting and recording commercial and political intelligence.

Mohan Lal left Delhi on December 21, 1831, on the first of his numerous journeys to Afghanistan. Governor General Lord William Bentinck had advised Burnes that "a knowledge of the general condition of the countries through which he was to travel, would be useful to the British Government, independent of other advantages which might be expected of such a journey."

Burnes was instructed to appear and act incognito, as a private individual. In early March 1832, Burnes put on Afghan dress and called himself Sikander Khan and Mohan Lal took the name of



Hassan Jan. Both shaved their heads and put on turbans, initiating the cloak and dagger activities of the British in the region. The mission travelled through the Punjab to Afghanistan, Turkestan, Khorastan and parts of Persia, between 1832 and 1834.

Undeterred by warnings of danger, they proceeded on the secret mission unperturbed at their poverty-stricken and appalling mode of travel, without much baggage and servants. Mohan Lal was ostensibly in search of a missing elder brother. The mission reached Kabul early in May 1832. By the end of June, they had reached Bokhara, where they stayed for a month, keeping a close watch on the situation, establishing useful contacts, keeping their true objectives and identity secret.

In July-end, Burnes left for the Caspian and Mohan Lal along with Dr Gerard, began the return journey to India via Mashed, Herat, Kandahar and Kabul. Burnes had earlier initiated and guided Mohan Lal into the intricacies and methods of preparing intelligence reports, which training stood him in good stead. Persia and Herat were in the midst of a squabble and open hostilities were feared. Mohan Lal, who had established close contacts with both sides, was approached and accepted as a mediator and conducted the delicate negotiations successfully; his talent for diplomacy came into limelight and his graduation into a shrewd negotiator began. Admired for his ability and loyalty, he was hailed as a hero by his seniors. Of equal importance was his genuine love for adventure and the stamina he exhibited in his travels.

Mohan Lal returned to India in March 1834 and shortly thereafter, he enrolled for being trained as a surveyor, in the Hindu College, Calcutta, where he spent over six months, studying topography, map reading and other related subjects considered important for his next assignment abroad.

In 1835, he was appointed commercial agent of Indus and accredited as a diplomat to the Court of Amir Rahim Dil Khan at Kandahar on a salary of Rs 250 a month. Presumably, this was the first diplomatic appointment of a Kashmiri by the British. The assignment continued till 1842 and the period included the traumatic and difficult times of the First Afghan War.



Mohan Lal's ability to undertake perilous missions at great personal risk without exciting jealousy and suspicion amongst the locals and his flare for establishing rapport, was exploited by the British. He secretly returned to India in September 1842, after the disastrous British defeat in Afghanistan. After some rest, he attended to official matters.

On July 19, 1844, he sailed from Bombay for Europe, visited Egypt, England, Scotland, Ireland and Belgium, and went to Germany in 1845. In these countries, he impressed people, both officials and non-officials, with his charm and ability and returned to India on November 16, 1845, perhaps the first Kashmiri of the British era to visit Europe.

On the basis of his personal assessment of Mohan Lal, Alexander Burnes testified that "he was very capable, his conduct was that of the most conciliatory, faithful and trustworthy description".

His talent, perceptiveness and natural capability were admired by whomsoever he met. Dr Gerard's report<sup>4</sup> on his loyalty, competence and achievements was most impressive (Punjab Record 105 page 36). For his extraordinary record of service, Mohan Lal received many awards between 1832 and 1846. He was received by Queen Victoria of England, the first Kashmiri to be received by a British monarch and invited to a royal ball at Buckingham Palace. He was welcomed by Prince Albert, the royal consort, at a private audience and introduced to many dignitaries, who admired his abilities and services. In Germany, Frederick William IV, king of Prussia, and his queen, invited Mohan Lal as a special guest to dinner. Dr Gerard has said about Mohan Lal that "through all his travels, he won the approbation of his companions, displaying everywhere a rare union of zeal, tact and fidelity". Wherever he went, a warm welcome awaited him. Gerard has further recorded: "Shah Kamran of Herat was delighted with his accomplished Persian and unobtrusive address. At Kandahar, he was respectfully received by Sardar Rahim Dil Khan, who praised his acquisitions and regretted that his own sons could not partake of them."



Mirza Abbas, the Prince Royal of Iran, made Mohan Lal a Knight of the Persian Order of the Lion and Sun (at the age of 20) for his services as mediator in delicate negotiations. Shah Shuja-ul-Mulk of Afghanistan bestowed upon him the Order of the Durrani Empire. Mohan Lal was, it appears, the first Kashmiri to have been honoured and decorated by foreign powers.

In India, Maharaja Ranjit Singh granted him a 'Robe of Honour' and a cash gift of Rs 500, while the Mughal King Mohamed Akbar Shah, conferred upon him a 'Khillat' — a regalia of distinction, with some jewels on a turban, which the king tied with his own hands. For his services during the first Afghan war, Mohan Lal was granted a personal allowance of Rs 500/- a month and a donation of Rs 15,000/- by the Court of Directors of the East India Company in England. The Government of India sanctioned him an additional grant of Rs 500/- a month. These hardly compensated him for his extraordinary services to Britain, diplomatic accomplishments at great personal risk, and the expenses he personally incurred on official duty.

Mohan Lal was loyal to the British and he was patronisingly accepted "as a living example of the salutary effect of Western learning on an oriental mind." He had a sharp mind, quick wit and a literary bent of mind. Apart from official reports, he meticulously recorded details of his activities abroad and published three books in English,<sup>5</sup> the first by a Kashmiri in that language:

1. Journal of a tour through the Punjab, Afghanistan, Turkestan, Khorestan and parts of Persia. (Calcutta 1834).
2. Travels in the Punjab, Afghanistan and Turkestan, to Balkh, Bokhara and Herat and, A visit to Great Britain and Germany. (London, W.H. Allen, 1846).

Mohan Lal published, in two volumes, a comprehensive and a highly-rated *Life of Amir Dost Mohammed Khan of Kabul* (Longman, London 1846), who played a crucial role in the history of Central Asia for nearly 40 years. This biography was acknowledged as a work of historical excellence and is still used as standard reference on the subject. The Oxford University Press, Karachi, reprinted this book in 1978.



A reviewer commented: "These works of an Asiatic in a foreign tongue must be reckoned a most creditable performance".

Mohan Lal had a multifaceted personality and had varying interests. He wrote an interesting and knowledgeable paper on *Greek antiquities in Afghanistan* and the Asiatic Society of Bengal credited him with the discovery of new coins and published articles by him on the historical monuments and ethnography of Afghanistan. His accounts, it is said, are a worthy companion of those of other explorers in Central Asia.

Sir James Todd, of the *Rajasthan Annals* fame, urged that "this most intelligent Hindu ought to be made an honorary member of every Asiatic Society". Mohan Lal spoke English with a good accent, idiomatic propriety and fluency. The Statesman commented: "He expresses himself with perfect clearness and intelligibility in English". His fluency in many languages came useful when oriental niceties had to be observed.

Mohan Lal was tall, very fair, handsome and always smartly dressed. He had a passion for elegance and grace and an eye for beauty. He carried himself with great dignity, and as Sir John Kaye said<sup>6</sup>, "He was a charmer of men".

According to Prof. H. R. Gupta, "He was at home with literary men in the library, with sportsmen in the field and poets in moonlit gardens. He was familiar with the best that Persian poets had sung and the loveliest that the artists had created in form and colour. He lived with the charm of roses and lilies and birds and green boughs. He enjoyed life and believed that this world was really a place worth living in. He was never too tired for more festivities, more songs, more wine and more women".

Apparently, he was a man of great literary taste and had a large library of his own, which he later in life donated to the municipality of Ludhiana, a town for which he seemed to have had a special feeling. He settled in Ludhiana for a while and lived there, a life of high spending with his fancy coach and horses and dancing girls and champagne. He lost most of his money and had to move to Allahabad in 1852, under pressure from local creditors. Three years later, a Government Commission in Lahore investigated his



Kabul claims and agreed to partial payment, but Governor General Lord Dalhousie rejected the Commission's findings on political grounds.

The long-awaited investigations availed Mohan Lal nothing; he was not repaid his dues and was briefly arrested in Ludhiana for debts. Except for a stint in the service of Kapurthala State in 1860, the remaining years of his life remained vague.

The existing records of personal life are so few and fragmented that nothing much is known about his family, his loves and friendships, his wives and his children and his later life. Pandit Nehru<sup>7</sup> regretted: "I should like to know more about this unusual, attractive and much married man." After his return to India in 1845, Mohan Lal presented a copy of his "Journal" personally to the Governor General<sup>8</sup>, and was well received by him and other officials. In the eyes of the Pandits, however, Mohan Lal remained an outcaste, who had polluted himself by living in and wandering through Muslim lands. On January 25, 1834, Diwan Ajudhia Prashad had advised him that "his journeys through Muslim countries had created some suspicion in the minds of his caste brethren and he should pay a visit to the temple of Mansaram Razdan (a Kashmiri saint), situated on the right bank of the river Chenab" in the Punjab.

Mohan Lal did as advised, while lamenting: "I always observed the outer forms of Hindu religion." Even so, according to his community, he had openly violated social and religious rules and stood excommunicated. Mohan Lal vehemently criticised this attitude and bitterly complained about the treatment he had received from his brethren:

"I was very coolly received by my countrymen (meaning his community) at Delhi, who, being overwhelmed by religious prejudice, considered me a *Musalman*, as a consequence of crossing the Indus, or the forbidden river. Although I had the happiness of being accorded a friendly reception by the gentleman of authority in this place, my enjoyment was embittered by the calumny and ill-feeling towards me of my relations in caste, because I had been in a Mohammedan country. Many of them were bigoted enough as not to allow me to drink out of the same cup with



them and others were so jealous of my good name, that they resolved to insult me."

After leaving Calcutta in 1834, where he was treated as a celebrity and feted by high society, Mohan Lal was condemned by his community for interdining with Europeans and for having broken community rules. He had earlier urged the British authorities in 1835, to direct the Magistrate of Delhi "to frustrate the evil designs of his opponents who had conspired to expel and eject him" from his caste.

It is not known what action, if any, the authorities could take, but it is clear that Mohan Lal remained a lonely figure without any redress or sympathy from his own community. It is also not known whether he was offered any opportunity for a penance or expiation later.

Under the circumstances, he was not able to get married within the Kashmiri Pandit community and remained isolated from them. He bewailed: "I am left without friends and without a place to reside in my native city of Delhi."<sup>9</sup> One wonders if the community would have treated him so harshly if he had continued to be well-to-do, or all his dues from the British Government had promptly been paid to him, and if he had lived a life of more temperance and less indulgence.

Out of sheer desperation, Mohan Lal was driven to conversion, and embraced Islam, which by itself would, on the one hand, signify the power of the community to keep its radicals under control and, on the other, the urge of non-conformists to revolt.

The diehards in the Pandit community seem to have been mollified later and accepted within its fold other young men who had visited Europe, perhaps on the presumption that they did not forsake caste restrictions and maintained orthodox traditions. Such persons, however, had to undergo expiation, or a *prayachitte*. This reform apparently came into force only after 1875, much too late for Mohan Lal.

Mohan Lal's Muslim name was Aga Hassan Jan, the name he had assumed in Peshawar, while entering the British diplomatic service. He married a ravishing beauty, Hyderi Begum, the niece of Mirza Sher Mohamed Khan, a leading member of the Muslim elite



in Delhi. About Mohan Lal's other marriages, Pandit Nehru commented: "Wherever he went, he managed to take a new wife unto himself, usually marrying in the highest circles... in Persia he married a girl of the royal family, hence his title of Mirza..."

It has been said, with what degree of certitude one does not know, that he entered into marriage 17 times. No details about his matrimonial alliances are traceable from any records, but these liaisons must have estranged his brethren and terminated whatever tenuous links that might have existed between him and his community of origin. Isolation and excommunication from the community had undoubtedly caused Mohan Lal deep anguish.

In 1844, at the young age of 32, Mohan Lal retired in disgust from government service on a pension of £1,000 pound sterling a year, and left for Europe<sup>10</sup>. There is no doubt that if he had served longer, he would have achieved greater distinction. It appears that his decision to proceed to England was also influenced by his hope of successfully pushing his claims at the highest levels.

"In Europe, he reached the zenith of his influence and glory, the farthest limit an Indian in the services of the British Government in those days could reach. He was shown all courtesies by words but not help by deeds. The Government of India could no longer employ one who had access to the highest quarters in England. So he was obliged to retire", according to Prof H. R. Gupta.

It is also true that many of the British officials in India were jealous of him, his reputation, his contacts, and were scared of dealing with him. His persistent clamour for the settlement of his financial claims and knowledge of the purpose of the expenses incurred, were a source of embarrassment to the British Government. They evaded payment and used every dilatory trick. This British attitude disappointed and greatly saddened him.

The name of Sir Alexander Burnes is familiar to those who have, even cursorily, read about the first Anglo-Afghan War; he was knighted and promoted. Mohan Lal, on the other hand, is rarely mentioned and the debt Burnes owed Mohan Lal, for his reputation as an accomplished negotiator, has gone unnoticed. The financial debt the British Government owed Mohan Lal for assistance in re-establishing their honour and for the return of British prisoners held



by the Afghans, was also sadly ignored, dismissed or rejected. This is especially so, when General Pollock had confirmed: "The return of the prisoners may be attributed in a great measure to the negotiations of Mohan Lal and the active cooperation of the Kuzzilbash Chief". (Punjab Record Lahore 41-C and Volume 11 P. 476).

It is also interesting to note that Mohan Lal was the only author who lived in Kabul throughout the critical period of the war, and maintained contact with rival Afghan leaders as well as the British garrison besieged at Jalalabad; his detailed account of events was most important and useful to the British.

Disappointments over the inequitable distribution of honours and awards among the British, particularly in Kabul, were chronic. Being an Indian, Mohan Lal received no British honour nor formal recognition of the extraordinary services rendered by him. He became a victim of the great game despite the yeoman's service he rendered to the British.

What role Mohan Lal played in the British-Sikh struggle for the Punjab, which eventually resulted in its occupation by the British and the transfer of Kashmir to Gulab Singh in March 1846, is not reflected in official records available, but the impact was substantial and definite.

What sort of life he lived, after retirement, is also not known. How creatively he lived and passed his life after publication of his books in 1846, has not come to light, but the author in him, after a promising start, seems to have lost the zeal to contribute further to early English writings by Indians. No other books or memoirs have since been known to have been written by him, or traced so far.

According to Aga Hyder Hussain, a grandson of Mohan Lal, he regularly maintained a daily diary of his observations, doings and reflections, and recorded meticulously events for posterity for 45 years, till his death. These volumes were taken away by a member of his family in 1922 to Calcutta and sold to an American, whose name and address are unknown, and we are the poorer. If the diaries could be traced, Mohan Lal would rank as one of the greatest diarists.



In the 1857 rebellion, Mohan Lal did not take an active part, but suffered at the hands of his own countrymen. During the uprising in Delhi, anti-British feelings ran high. Mohan Lal's fair complexion, deportment and past association with the British, led many Indians to mistake him for a foreigner. (This happened also to many other fair-looking and well-to-do people in Delhi.)

"His was one of the first native houses plundered, when he lost his prized possessions and he himself was just saved from execution by the prompt intervention of some influential Muslims, who testified that he was not a Christian". Hodges, his companion and relation, however, got killed.<sup>11</sup>

Mohan Lal carried with him very sad memories of the uprising. After the revolt, he temporarily moved to Meerut. The Kashmiris took no social interest in this extraordinary person, born of them. His brother, Kedar Nath, died in 1853 in Delhi. Mohan Lal missed the funeral. There is no reference to the sort of contact they maintained, if at all.

In the writings of Muslims of his time also, there is no worthwhile reference to the life and activities of Aga Hassan Jan alias Mohan Lal. His Muslim faith is affirmed by his having constructed an imambara in Ludhiana, which stands close to a street named after him.

Mohan Lal passed away in Delhi, at the age of 65, in 1877, and was buried in his garden, called Lalbagh, near Azadpur, on the Delhi-Panipat Road, where a raised platform marks his grave, alongside that of his wife.

Mohan Lal left behind five widows, three sons and four married daughters. No details are available about them, except that one of his sons, Shaukat Hussain, received a life pension of Rs 25 a month from the Government of India, for services rendered by Mohan Lal. Nevertheless, it was well known that he had much before his death, with the assistance of some British friends, arranged to send one of his daughters to England for higher education. She was the first daughter of a Kashmiri father to go overseas for higher studies: she might even have been the first Indian girl to have done so, for that matter.



In the field of women's education, this act would have been considered revolutionary, according to the social and political conditions obtaining then, and deserves high praise. It affirms his progressive and farsighted outlook.

There are two phases of Mohan Lal's life which call for further comments and those are the most adventurous of his working life abroad. His activities with the British Mission of Burnes and his incumbency in Afghanistan, including the first Anglo-Afghan war, are both well-described and documented in his books, the intelligence reports and in the life of Amir Dost Mohamed.

After the death of Ahmed Shah Abdali in 1773, Afghanistan was in turmoil and a state of anarchy prevailed. Afghan chiefs, Persian kings and later, Maharaja Ranjit Singh (who occupied Peshawar in 1834) vied for power and influence in the region. The British, in order to extend their own sphere of influence, showed interest in cultivating friendly Afghan chiefs (opposing the Persian Shahs, some of whom were pro-Russian) and through them curbing Russian influence, while seeking the cooperation of the Maharaja to facilitate and advance their policies and interest in Central Asia.

The British were playing their part in the great game of keeping Russian influence at bay and to establish friendly relations with the local people and rulers of the countries in Central Asia. They had made overt and covert diplomatic moves earlier but did not succeed. The first Burnes Mission, of which Mohan Lal was an important member, established excellent contacts, obtained first-hand information and paved the way for their future activities.

Mohan Lal, however, was in favour of a diplomatic initiative to pursue British political objectives, but the latter unfortunately sought a military solution. Under instructions from Governor General Lord Auckland, British forces advanced in February 1839 (against advice to the contrary, ill-prepared and with inadequate strength), through the Khyber pass, to set up a pro-British authority at Herat in place of a pro-Persian one.

"An army of the Indus" was hurriedly assembled on the banks of the River Indus and it invaded Afghanistan, succeeding in occupying Kandahar, Kabul and Ghazni in 1841. When all was apparently going well for the British, an insurrection broke out and



the Afghans retaliated, inflicting the greatest defeat of the century by an Asian power on the British forces. This disaster involved British political and military officers, their families, and civilians attached to them as well as Indian sepoys.

Sir William MacNaughton, envoy and former Chief Secretary to the Government of India, Sir Alexander Burnes, and most other officials were killed between October 12, 1841, and February 1842, and the British were thrown out of Kabul. Both MacNaughton and Burnes lost their lives, as they had ignored the advice of Mohan Lal and sealed their own fate and that of the British garrison. Only a few remnants of the force reached Jalalabad.

Mohan Lal summed up the defeat: "I can hardly express in writing the horrid scenes I have witnessed and the most disgraceful treatment the British officers, ladies and servants have received in the country." (Punjab Records 4/c/16-Kabul). His private Kashmiri musician, Qadir Joo, and his personal servant Mohd. Abdullah Kashmiri, lost their lives in Kabul.

It is of interest that Mohan Lal did not hesitate to "even take British officers to task for their amorous intrigues with the Afghan ladies of Kabul". This criticism by an Indian angered them and won him many enemies. He made a hole in the back wall of his house and escaped at the dead of night, taking refuge with a friend. However, he was caught, tortured and later confined for eight months, with a demand of Rs 30,000 as ransom for his release, which the Government of India was in no position to pay at that time. He was taken into protective custody by Nawab Zaman Khan, a cousin of Amir Dost Mohamed Khan, who stealthily took him into his zenana. Mohan Lal was very touched by the efforts and personal offer made by his old classmate, Shahamat Ali of the Delhi English College, to have him released on payment of Rs 10,000 as ransom. But it did not work, and the offer remained infructuous.

Mohan Lal, however, could not have remained a silent prisoner for long and interestingly, he made secret arrangements for the despatch of two weekly letters to the British at Jalalabad, giving them up-to-date information about conditions in Kabul. Each letter



meant an expense of Rs 200 for its delivery and fortunately for him, none were intercepted by his captors. The risk of discovery was great and could have cost him his life.

At times, he felt that the chances of his release were limited. That is why he implored the British "to fix an allowance of Rs 100 per month for his two daughters, below two years of age, and to have them educated in the English school at Ludhiana, and Rs 50 a month for his wife", if anything should happen to him.

In India, it was believed that Mohan Lal had been killed along with Burnes and others. In fact, the Asiatic Journal of March 1842, announced his death. But the news turned out to be false. Mohan Lal could not die so easily. He was eventually saved by his friends in Jalalabad, wrapped in a blanket and moved to the border from where, he secretly, and at great risk, managed to cross over to India on September 9, 1842. It was later in the year, that General Pollock, with his "Army of Retribution", avenged the British defeat and occupied Kabul.

Dost Mohd. Khan, friendly to the British, was installed as Amir of Afghanistan, a step if taken earlier, would have saved the British the ignominy of the First Anglo-Afghan War.

With the Burnes Mission, Mohan Lal's work involved high adventure, great risk and brushes with death and demanded the highest sense of understanding, tact and diplomacy. In addition, bribery and political assassination were extensively used as active instruments of British policy. A letter of November 7, 1841, addressed to Mohan Lal by Sir William MacNaughton gives an indication of the services required and the implications of the actions to be taken:

"I am very glad to find that you are doing such excellent service. Enclosed are two letters for Khan Shareen Khan. and Mohd. Hamza. You may assure them both that if they perform the service they have undertaken, the former shall receive one lakh rupees and the latter 50,000 rupees and everything else they require. I hope you will encourage Mohd. Yar Khan, the rival of Ameenullah, and assure him that he shall have the chiefship. You may give a promise in my name to the extent of 5 lakh rupees." (Punjab Record 41/c/161).



It is most interesting to note that Mohan Lal succeeded in his efforts by virtue of his shrewdness, his abundant courage and confidence, where others faltered. Sir Alexander Burnes failed to negotiate a treaty with the Mir of Khairpur, Rustom Khan, while Mohan Lal concluded the desired concord at terms more favourable than contemplated by the British, and secured the keys to the strategic fort of Sukkur.

Considerable expenses were incurred by him in Afghanistan for political and diplomatic activities, including the wooing and winning over of opponents, elimination of adversaries, by means not excluding murder, hiring intermediaries, etc.

To give Mohan Lal due credit, he faithfully submitted detailed reports of the steps taken, including expenses incurred, even when some of these were embarrassing. Accountants, it seems, questioned Mohan Lal for paying assassins "for the head was not actually produced as stipulated" and for lack of proof that another victim "was killed rather than died in battle..."

Mohan Lal had in his possession the relevant correspondence with MacNaughton, which confirmed his authorisation. He was assigned to the N.W.F. Agency in 1843, but received no special compensation for his singular efforts in Kabul, like other British officials. He had borrowed more than Rs one lakh, when he was alone in Kabul, for the purchases of supplies for General Pollock's army and for bribes. Available documents showed that he was duly authorised to make the payment, but he was never reimbursed for all this money spent.

Mohan Lal indeed was a victim of the unscrupulous and perfidious acts of administrators, who were not even shamed by their duplicity. It is a pity that on his return to India under trying conditions, and despite repeated representations to the concerned authorities, he received no reimbursement or compensation and he was forced to personally repay the loans raised by him for the expenses incurred during his employment in Afghanistan.

This left him in poor financial straits. For a long time, he was optimistic of being repaid by the authorities, but as time elapsed, his hopes receded and his disappointment was without bounds. His lifestyle was seriously affected by his poor financial situation and



he became bitter at the unfair and unjust treatment meted out to him in denying his due claims, which were by then proving an embarrassment to the British.

In the end, while one admires Mohan Lal's many qualities of head and heart, his non-conformism, pursuit of adventure, competence as a youthful and fearless diplomat, ease with royalty and their inscrutable ways, progressive ideas and starry rise; one is constrained to bemoan his eventual eclipse. He loved life and to him life was a great enterprise, with its difficulties and impediments.

With his leadership qualities and instincts, he claimed many 'firsts' for the Kashmiris, under circumstances hardly propitious, socially, economically and politically. He was indeed a trail blazer, who regretfully met a sad end, but whose name and work could not be obliterated from the annals of history and of his community. He was a hero as well as a victim in the great game of Central Asia in the last century.

It is tempting to indulge in post-mortem verdicts, but Mohan Lal lived in times more difficult than ours. As Nehru said: "No one can tell what this man would have made of himself if he was born 125 years later."

We are concerned with the man, the stuff in him, the gold content so to say, remembering Robert Burns, who wrote two centuries ago:

*The rank is but the guinea's stamp,  
The man's the gowd for a that.*

In 1830, Russophobia was at its peak. In 1839, and later in 1878, Russian involvement in Afghanistan resulted in the British invasion of Afghanistan and occupation of Kabul. However, the Russian takeover of Merv in 1884, and the Panjdeh incident of 1885, forced them to demarcate the Russo-Afghan border completely by 1885, and the last dispute was settled by the Pamir Agreement of 1895, with a clear and well-defined border. The boundary between India and Afghanistan was delimited and recognised by the Durand line in 1893, and thus the frontier was made safer for British interests in India, with Kashmir acquiring greater importance for them.



Let us close the case history so to speak of Mohan Lal Zutshi, an audacious Kashmiri migrant, unjustly treated and harassed by British diplomacy and duplicity.

As regards other Kashmiris who migrated from Kashmir and achieved glory, it would be appropriate to refer very briefly to Jai Ram Bhan of humble origins, who achieved a position of highest trust and honour with the Mughal King Shah Alam, and at whose behest a royal directive was issued and members of his community were officially designated as 'Kashmiri Pandits', to distinguish them from other Brahmins in India. Another great son of the community was Dewan Nand Ram Ticku, who for six years worked most competently as Dewan or Prime Minister of Kabul, under a bigoted Amir. His status and importance could well be judged by the fact that coins were minted and inscribed with his name and remained in circulation as legal tender, for a long time.

There are many other Kashmiri Pandits, known and unknown, who, forced by differing circumstances, had to leave Kashmir, the land of their origin, from time to time, and made good and whose descendents rose to great heights, both in the then native States, British India, or subsequently in free India.

The illustrious and unique family of Motilal Nehru and Jawaharlal Nehru, that produced three Prime Ministers, almost in succession, in free India, would be a proud record worthy of emulation and glorification for any realm. The sacrifices of two of them (including a woman) and death in the service of their country bestows martyrdom if not immortality upon them. They were all descendants of migrants or exiles from Kashmir and proud of their Kashmiri heritage.

Regretfully, a descriptive listing of many other talented, eminent celebrities from the Kashmiri Pandit community would be impossible to accommodate in this review.

The social and political process through which changes were ushered in, had a tremendous impact on the Pandits, leading some of them to extraordinary actions and heroic deeds. These lives could be guiding stars for many of our young men of today. It would be of great interest, socially, historically and academically, to have such lives documented for the benefit of future generations



Notes

1. *Life and Work of Mohan Lal Kashmiri* by Prof H. R. Gupta, Lahore, 1943, with a foreword by Jawaharlal Nehru.
2. *The Great Game* by Peter Hopkirk, John Murray London 1990. Ibid: Pages 140, 197, 239 & 252.
3. *Eastern Approaches* by Sir Fitzroy Maclean, 1949.
4. *Defence of India* by Sir John Mcgregor, 1884.
5. *Life of Amir Dost Mohd. Khan* by Mohan Lal, 2 Vols. Reprinted 1978, with a new introduction by Navey Dupre. Oxford University Press, Pakistan. Original in 1846 (Longman, London).
6. *History of War in Afghanistan* by Sir John Kaye, 2 Vols, 1874. Ref: 2nd Vol, Page 98.
7. *Autobiography* by Jawahar Lal Nehru, pages 13-14.
8. *Imperial Records Secret Consultation*: June 15, 1844.
9. *Journal of Tour through Punjab, etc.* by Mohan Lal, (Calcutta - 1834), page-33
10. *Travels in the Punjab & Visit to Great Britain, Germany, etc.* (W.H. - Allen 1846) by Mohan Lal.
11. *The Kashmiri Pandit - Story of a community in exile* by Kusum Pant - Allied; 1988.



### Chapter 3

## *Subjugation of India and Kashmir*

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History is a survey of man's existence and occupation on earth; the ideas, events and meaning of man's long journey through his birth and development, leading to the progress of civilisation, which are basic to any elicitation, indicative of how the past is interpreted and what lessons might be learnt for a clearer comprehension of the thoughts, motivations and actions, the philosophy and forces that operated and influenced him. Perhaps, it may hold a warning or a challenge for the future. Yet, there could be several perplexing and inexplicable acts of omission and commission.

To write even a brief history of foreign subjugation and domination of India from pre-historic times is a task beyond the scope of this book. Historical material is aplenty and the objective here is to briefly touch upon essential facts and events which might be described as milestones in the historical evolution of India.

It is astonishing, perplexing and paradoxical how India,<sup>1</sup> a large land mass, seemingly protected by geographical barriers — the mighty Himalayas and the Hindu Kush ranges in the north, the Indo-Gangetic plains in the middle and the oceans to the south, failed to prevent the penetration of foreigners, from ancient times. History reminds us<sup>2</sup> that waves of migrants and marauders, including Greeks, Scythians, Huns, Arabs, Iranians, Turks, Mongolians and others, kept entering India, from time to time.

Some came temporarily to escape want and oppression in their own lands, some to settle down permanently, attracted by the culture and philosophy of India and got absorbed in its civilisation; yet others, hell-bent on loot, departed with impunity after the raids.

There were a few established kingdoms, mostly in the north,



Looking at this vulnerability of India to foreign invasions from the earliest historical times, it is shocking why no organised steps were devised and enforced by Indian rulers to supervise, control and restrict the influx of undesirable people who were violating the hospitality and forbearance of India. However, it may be noteworthy that the Indian attitude to visitors, to some extent, was conditioned by the belief *Atithi Devo Bhava* — the visitor is like a God. The Indian frontiers sadly remained open to invaders. In the case of Kashmir, the great natural ramparts which enclose the Valley, must have assured its seclusion and, for a long time, immunity from invasion.

The earliest Indus Valley Civilisation<sup>3</sup> had, it seems, begun around 5000 B.C., as evidenced by new investigations involving the latest archaeological sites, early layers of 25 ft below water level and excavations at 45 ft. By 3700 B.C., its civilisation, extended from present day Pakistan to Gujarat, the Punjab and Uttar Pradesh.

The early Vedic Age (3100 - 2000 B.C.) dawned on the land of Sapt Sindhus, that is, seven rivers in India, as mentioned in the Rig Veda. The Vedic people were the same as those belonging to the Indus valley. By 2500 B.C., the cities of Harappa and Mohenjodaro had populations of about 100,000 people each.

Harappa seems to have been destroyed around 1930 B.C., and the Vedic age seems to have ended by 1250 B.C. Both the cities were abandoned around 1500 B.C. There is no apparent indication of an Aryan invasion. In pre-historic times, the Indus Valley Civilisation had its remarkable achievements, reflected in the capital cities mentioned above, but nothing is known with certainty as to the causes of its destruction, though a few indications like floods, internal strife and invasions are cited.

Western historians<sup>4</sup> and some Indologists propagated a theory in the Nineteenth century that the earliest invasion of India took place around 1500 B.C., in the form of hordes of Aryans<sup>5</sup> — a nomadic people from Central Asia — who, while starting in the North West, spread by 1000 B.C., to Bihar and Bengal. This hypothesis was based on, what was claimed as the structural family relationship of Indo-European languages and the presumption of



the common ancestry of Sanskrit, Avestan, Greek, Italian and other Nordic languages.

The period of time for the entry of the Aryans into India was fixed at 1500 B.C., by assigning 200 years, in several layers of pre-Buddhist Vedic literature and suggesting that the invading Aryans brought horses and chariots, offering them military advantages.

But the Aryan invasion theory<sup>6</sup> was only a concept propounded by certain Indologists, without any basis, in fact, without solid grounds for its support. However, the theory gained currency and acceptability with the history of India being rewritten during the British regime.

The Aryan invasion theory fulfilled important imperialistic and colonising functions. It reinforced the attitude that the highly regarded Vedas came after the so-called Aryan influx and Hinduism did not have the antiquity it deserved.

The chronology adopted in 1853 by Max Mueller (1823-1980)<sup>7</sup> and others, was in fact based on a ghost story. An Aryan invasion date was used as a base to fix other ancient events in the history of India, Iran and Europe and arbitrary assumptions were promoted in this regard.

The chronology "accepted uncritically by most Western scholars is based on very shaky grounds indeed," said Klaus Klaustermair, an eminent historian-philosopher. David Frawly, an outstanding scholar of Sanskrit, said, "Processional changes are the hallmark of Hindu astronomy. We cannot ignore them in ancient texts just because they give us dates, too early for our conventional view of human history."

Many Indian and other researchers have helped to develop a more accurate picture of ancient India; they have benefited by a carbon-14 dating process, the later location of the important Saraswati river (and associated area of the seven rivers of the Vedas) and other clinching arguments provided by the discovery of more Indus Valley cities.

The idea of a parent race caught the imagination of the Eighteenth and Nineteenth century European scholars, who hypothesised elaborate Aryan migration from Central Asia, west to



Europe, south to India and east to China — conquering local primitive peoples and founding the world's great civilisations.

The Aryans were treated as the authors of the Vedas, moving into India from the north-west, conquering and displacing the dark-skinned people to the south and this theory wrongly implied that the Vedas were brought to India by outsiders and were not indigenously composed in India.

With fresh reappraisals, new discoveries and greater insight, the Aryan invasion theory has been debunked and discarded as a true record of historical occurrences. But it still seems to have got stuck in some pages of old history books and continues to be referred to in films and some serials.

The supposed precedent for subjugation by the Aryans could not hold good for the British colonisation of India. Division of races and religions could also not be justified and the validity and superiority of western religion and culture was not established by an Aryan invasion that never was.

An ever-increasing quantity of physical and scriptural evidence now points to the gradual evolution of culture in India from pre-historic lifestyles to that of today's rich ethnic diversity. In this context, the later works of Kenneth Kennedy of Cornell University, B.B. Lal and other Indian archaeologists, Jim Shafter of Case Western Reserve University, Prof Seidenburg of the University of California and other internationally-acclaimed researchers have refuted the various aspects of the Aryan invasion theory. An inglorious chapter of falsification of India's history has finally ended. The return of the Aryans by B.S. Gidwani is called by the author "a fictionalised alternative history", and a competing version of relevance and significance.

With the Aryan invasion theory debunked, other events of the periodic subjugation and colonisation of India have to be reckoned with and analysed. It would be necessary for the sake of brevity to chronologically refer to such events, as they bear some significance in the long journey ahead. Otherwise, the ghosts of the unexplored past will haunt people for generations.

In 531 B.C., King Cyrus of Persia<sup>8</sup> invaded the north-western Hindu Kush and by 518 B.C., his successor Darius-I conquered the



Indus Valley and the Punjab and treated the Indian territory as a part of Persia. He was, thankfully, said to be tolerant of the Indian religion. The Persian rule was ended at Tigris in 331 B.C., by the invading forces of Alexander the Great.

Alexander<sup>9</sup> also defeated Indian King Porus in 326 B.C., and the latter became a tributary and an ally. However, Alexander had to retreat within two years, due to a mutiny amongst his soldiers, and within seven years, the Greek lost all power in India to Chandragupta Maurya and Kautilya. Based in Pataliputra, the Mauryan dynasty lasted 137 years, characterised by grandeur and superb administration.

Ashoka, grandson of Chandragupta, ascended the throne in 273 B.C., waged wars to extend his kingdom, and profoundly affected by cruelty and suffering, struck by remorse, gave up violence and became an ardent Buddhist. His rock edicts, 84,000 Buddhist monasteries within India and more in Kashmir, religious missions to Tibet, China, Mongolia, Japan and other countries, combined with secular zeal and administrative efficiency, made him a truly great ruler.

Ashoka was also king of Kashmir, propagated Buddhism and founded a new capital city in Srinagar, supposedly near today's Pandrethan. But opposition to his edicts and vegetarianism simmered among his people. He weakened and lost power, dying in 232 B.C., without, unfortunately, grooming a successor. His dynasty continued to rule till the Seventh century A.D., without leaving behind many creditable and historical records except that of King Jalauka, son of Ashoka who was a great warrior and became a devout Shaivite and promoted Shaivism in Kashmir. He was the first king to set up a complete administrative system with 18 offices to control. "From the death of Ashoka to the empire of the Guptas, i.e. a period of almost six hundred years—Hindu inscriptions and documents are so few that the history of this interval is lost in obscurity", says Smith in his *Oxford History* and David in *Buddhist India*.

In the meantime, north-western India faced a series of invasions from 400 B.C. to 400 A.D., from across Central Asia, at the hands of the Sakas (Scythians), Palavis (Parthenians), Yahchi



(Kushans), the last best remembered amongst them. Kushans were nomads, akin to Turks, who had been forced out of their lands in Bactria and came to stay in India. The Kushan ruler, Kanishka, first conquered Kabul and then penetrated deeper into India. Their empire began with Kanishka in 165 B.C., and lasted till 280 A.D.

Under Kanishka, arts, literature, science and Buddhism flowered. Mahayana Buddhism (Greater Vehicle) attracted many followers in China and Japan and Kanishka held the Third Mahayana Council in Kashmir in 110 A.D. Both Buddhism and Hinduism underwent many changes and spread, but, with the passage of time, it seems Hinduism had the upper hand and Buddhism declined.

Then rose Chandragupta of the Gupta dynasty of Magadh in 320 A.D. This dynasty lasted till 530 A.D., in a glorious era of monarchy. Grandson Vikramaditya achieved a splendid and unparalleled reign (318 B.C. to 413 B.C.).

Chinese pilgrim Fa Hsein noted the details of facilities and prosperity in the country. The Guptas built the first free hospital in India, much before the earliest in the West. Sanskrit acquired great importance, the epics came to be written, Kalidasa, Aryabhatta and other writers and philosophers represented the apogee of cultural and literary activity.

The Hun invasion began with Toramina (500 B.C.- 502 A.D.), capturing Malwa and his son, Toramina Mahiriquilla, attacking the Gupta dynasty from Kabul to Central India in 515 A.D., and defeating them. Mahiriquilla was vanquished in 530 A.D., and retired to Kashmir, where he became the scourge of the people<sup>10</sup>. Kalhana, in his *Rajatarangini*, refers to his extreme cruelty as death personified and "this terrible enemy of mankind had no pity for children, no compassion for women and no respect for the aged — he destroyed three crores of people. (I-298)".

Mahiriquilla's reign ended between 544 and 550 A.D., but Kalhana says, "After ruling the land for 70 years, this terror of the earth became afflicted in his body with many diseases and immolated himself" (I-309). For more than a century, India suffered terrible bondage and chaos, as a result of Hun rule.

Harsha Vardhana of the Gupta dynasty (606-648 A.D.), recaptured North India, with his capital at Kanauj, gave peace once



again and encouraged the arts. The size and splendour of his kingdom could be gauged from the 10,000 temples destroyed in 1000 A.D.

Harsha was a man of great personal charm and loved poetry and music. The memoirs of Yuan Chwang are full of praise for his grand philanthropy and just rule. But Harsha over-personalised his regime and, when he died, an usurper seized the royal seat and the country passed into anarchy and chaos for the next 1,000 years. Harsha was the last Buddhist king of India.

The abhorrence of violence as a part of the philosophy of life amongst the Hindus, institutionalised into two religions, which aggravated passivity and pessimism amongst the people. The Indian people had unfortunately wasted their power and wealth in internecine feuds and wars, without any outstanding leadership to reorganise their resources, to make them strong and united enough to face any future onslaught. For nearly 400 years, their known weaknesses presented an open invitation for northern India's conquest by outsiders.

Prophet Mohammed, founder of Islam, born in 570 A.D., passed away in 632 A.D. His followers had expansionist plans under the Islamic banner and attacked India in three waves. The Arabian wave came in 712 A.D. They conquered part of Sind and stopped at the Thar desert, without advancing further, for three hundred years.

The second was the Turkish wave of 1001 A.D. by Mohammed Ghazni from part of present day Afghanistan. Ghazni made 17 raids in 20 years, sacking Mathura in 1017 A.D., Somnath in 1024 A.D., without India responding, preventing loot and slaughter. By 1021 A.D., he had subdued the Punjab and made Lahore into a provincial capital.

The third wave, this time not of raiders but invaders for territory, came with Mohammed Ghori of Ghur in Afghanistan in 1185 A.D., who defeated the Muslim rulers of Sind, occupied the Punjab and prepared to march to Delhi in 1186 A.D.

It is both bewildering and disappointing that the Hindu rulers instead of rebutting the invaders, dissipated their might in mutually destructive and ruinous feuds and wars. Even the diversions of the four Crusade wars in Europe did not help India.



The warrior classes of India had tragically surrendered their role as defenders of the realm. The invaders, on the other hand, by 1206 A.D., when Mohammed Ghori died, had occupied nearly all of India up to the Deccan. It is then that one Muslim general, Qutab-ud-din Aibak, set up an independent kingdom in Lahore, where his successors ruled as the Delhi Sultanate till the Sixteenth century.

With the beginning of the Sultanate era, apart from ruling ruthlessly, the Sultans embarked upon the killing of Hindus, confiscation of their properties and the destruction of temples and their conversion, with a fanatical zeal and mercilessness that made even Muslim historians shudder. But the sultans stayed in India and spent their spoils in India.

Will Durant wondered: "What was the secret of the political history of modern India?" And, provided the answer: "Weakened by divisions, it succumbed to invaders, impoverished by invaders, it lost all power of resistance and took refuge in supernatural consolation. It argued that both mastery and slavery were superficial delusions and concluded that freedom of the body, or the nation was hardly worth defending, in so brief a life. The bitter lesson that may be derived from this tragedy is that eternal vigilance is the price of civilisation. A nation must love peace, but keep its powder dry." Good advice even for today!

And what of the Indians themselves? "India in its history never invaded its neighbours with force of arms, for expansion of territories or for enslaving others. It demonstrated tolerance, religiosity, reconciliation and accommodation in a spirit of universalism, simplicity, wantlessness and peaceful persuasion. The germination and growth of Indian civilisation in the East dates back to pre-historic times, not for new lands, but as interaction, to understand the essentiality of an organised culture, practising the arts, customs, and religions of India, using Sanskrit as their sacred language," says G. Coedes, in his book titled, *Indianised States of South East Asia*.<sup>11</sup>

A plausible reason for Indian emigration and push into the East, is the pressure exercised by the Kushan invasion of the first century A.D., but there are also indications that commerce was a



motivation, facilitated by sea routes. The recipient countries were also described as "Father India", and comprised South-East Asia, Indonesia, Indo-China and the Malay Peninsula. Several small Indianised States also appeared at the beginning of the third century A.D., though the larger ones emerged in the first century, like Khmer (Funan). The Champa, the States of the Malay Peninsula and Indonesia grew from the fourth to sixth century A.D. Cambodia came into being between 550 A.D., and 630 A.D. and Champa from 529 - 686 A.D. The kingdom of Sri Vijaya (seventh to Ninth century), the kingdom of Angkor (802 - 850 A.D.) flowered in the eleventh century and Burma (today's Myanmar) was founded between 825 A.D. and 849 A.D. All these kingdoms were ruled by local kings, who successfully established great dynasties.

The influence of Buddhism on China, Japan, Korea and other parts of the East was mainly facilitated by the land route, aided by the seas as well. The early Chinese sent students and missionaries to India, who collected Indian manuscripts, translated them, studied in Indian educational institutions and prepared reports on India's topography, geography, administration, religion and philosophy.

In this regard, Coedes points out, the method of colonisation by China and Indianisation by India, were radically different. "The Chinese proceeded by conquest and annexation, soldiers occupied the country and spread the Chinese civilisation. Indian penetration and infiltration seems always to have been peaceful. Far from being destroyed by the conquerors by use of force, the native people of South-East Asia found in Indian societies, transplanted and modified a framework within which their own society could be integrated and developed. The Indians never engaged in military conquest and annexation in the name of a state or mother country. There was no political dependence."

The Indians also preserved the essentials of the local cultures and developed them, each according to its own genius — producing marvels like Angkor and Borobudur. In the domains of art, religion, literature and law, the imprint of Indian genius is perceptible and persistent.

Regarding the interaction of India and China, Lin Yu Tang<sup>12</sup>, the famous Chinese philosopher and author said,



"India has a rich culture, a creative and imaginative literature, and is the world's teacher in trigonometry, quadratic equations, grammar, phonetics, Arabian nights, animal fables, chess, as well as in philosophy and has inspired Boccaccio, Goethe, Herder, Schopenhaur, Emerson and probably, Aesop. A trickle of Indian religious spirit flowed to China and inundated the whole of Eastern Asia. Not too little, but too much is India's trouble." It reflects the record of India in its relations with its neighbours.

Coming back to the Delhi Sultanate<sup>13</sup>, after the defeat of the Hindu Shahi kings of Kabul and the Punjab, under the slave dynasty (1206-1290 A.D.) started by Qutubuddin Aibak, the whole of north India came under Muslim dominion. The Khilji dynasty followed, founded by Alaudin Khilji, and by 1300 A.D., the Muslim invaders had reached Cape Comorin.

The Khiljis (1295-1320) had five rulers — the Tughluks (1320-1430), the Saiyyads (1440-1450), Lodhis (1451-1526) up to Ibrahim Shah (1517-1526), a total of 20 rulers, covering 230 years of domination. Some ruled more harshly than the others, but the ruthlessness and fanaticism of Qutubuddin Aibak, Balban, Mohd. Tughlak, Feroze Shah and Sultan Ahmad Shah were singularly notorious.

Timur<sup>14</sup> (Mongol descendant of Chengez Khan) invaded and sacked Delhi in 1395 A.D. After defeating Mohammad Tughlak, he returned to Samarkand with a large war booty, leaving behind weak and inept sultans, who ruled for nearly a century and continued the cruel suppression of the Hindus. Owing to their excesses, they not only lost the support of the Hindus but that of the local Muslim population as well. The unjust exercise of power weakened them and they were defeated by other invaders, as easily as they had vanquished the Hindus.

The invasion of India by Babar, a descendant of Timur and Changez Khan (Mughals), resulted in the defeat of Sultan Ibrahim in 1526 A.D., at Panipat and laid the foundation of Moghul rule, claiming "Turkish vigour and Persian culture", to give India seven more generations of foreign rulers. Babar died in 1538 A.D., after his son Humayun recovered from his illness. Humayun, a weak ruler and an opium addict, lost control of his territories and roamed



Afghanistan and Persia for 15 years, seeking help to recover his kingdom.

Sher Shah Suri (1541-1545 A.D.), an Afghan chief, defeated Humayun twice and reestablished Afghan rule in India. He rebuilt Delhi and created historical monuments and a highway through India. He was followed by two minor Shahs, who ruled for 10 years and were defeated by Humayun, ending the first Afghan rule of India. Humayun regained Lahore and Delhi in 1555 A.D., and died in 1556 A.D., due to a fall from a window. Humayun left his inheritance to Akbar, his son of 13 years, who was supported by Bairam Khan, a general, who, as regent, helped him consolidate the northern Indian territory.

At 18 years of age, Akbar insisted on exercising his own authority, initially rather mildly, but later demonstrated his personal strength to become an absolute ruler. In due course Akbar dominated the Rajput Hindu chiefs of Rajasthan and made the defeated rulers his allies, married among them, gave them freedom of religion and appointed them as generals and viceroys. To rule a multi-religious and multi-state empire, Akbar like Ashoka, created stability by a rule of equity and land reforms and fair taxation to help the peasantry. He withdrew anti-Hindu Jazia tax and other discriminating punitive laws and encouraged arts and letters. Though not literate, Akbar listened to discourses on different religions every Friday to understand and appreciate their background.

In 1582, Akbar proclaimed the Din-e-Elahi, a simple monotheistic cult, seeking religious truth and equality, "for honour to God, for peace to the people and security to the empire". Akbar ruled with splendour for 49 years, and strengthened and expanded his domain.

Jehangir, his son, was, however, itching for the throne. Akbar died in 1605 A.D., shunned by his family and Muslim priests, with no death prayers offered, and probably poisoned by his son. Jehangir succeeded Akbar the next day, and this callous, opium addict, running a harem of 6,000 women and a poor administrator, reigned for 25 years till 1630 A.D., dying after quelling the Bengal rebellion and annexing Mewat.



Shah Jahan, his son, succeeded in 1630 A.D. He married Mumtaz Mahal, a beautiful widow, who during 18 years of their love marriage, gave him 14 children, dying during the last child birth in 1631 A.D. Shah Jahan decided to build a unique monument to her memory and, 20,000 workers crafted Taj Mahal in 22 years and drained the State treasury. Shah Jahan imposed severe taxes on the people to accomplish his objective.

Shah Jahan killed his brothers, to avoid competition for his throne, but as one historian says, "he neglected to kill his sons", one of whom, Aurangzeb, overthrew him and took over as emperor in 1658 A.D. Shahjahan was held captive for nine years in Agra Fort, where he passed away in 1658 A.D., after a life of extravagance. Yet he was a patron of the arts.

Aurangzeb ruled from 1658 A.D. to 1707 A.D., as a strict Muslim, a tough Islamic ruler and an austere but fanatical emperor, directing anti-Hindu policies, destroying temples (including those of Mathura in 1688 A.D.), schools and forbidding public worship by the Hindus.

The support of the people, won by Akbar, was wiped out by the cruelty and profligacy of Jehangir, the extravagance and prodigality of Shah Jahan and the fanaticism, ruthlessness and oppression of Aurangzeb, which weakened and hastened the end of the Moghul empire in India.

Guru Gobind Singh was martyred by Aurangzeb on November 24, 1675, for defending the rights of the oppressed Kashmiri Pandits in Kashmir to practise their religion. With reverence, the Pandits remain in deep gratitude to the Guru.

Aurangzeb extended his empire from the Hindukush to the Coromandal coast, but during his rule, he was not able to consolidate his power and authority in his realm. The Marathas were growing in power and remained uncontrollable. After his death, Aurangzeb's descendants did not prove worthy of their position and the Moghuls suffered a great decline in their prestige and power. Persian Nadir Shah's attack of 1739 A.D., made things worse for them.

The Marathas also faced Ahmad Shah Abdali, an Afghan tribesman, and were defeated in 1761 A.D., at Panipat. It became



obvious that neither the Moghuls nor the Marathas could individually protect themselves with or without Rajput help, from foreign attacks, which provided an opportunity for the British colonisation of India. The crushing of the great rebellion of 1857 and their success at Plassey, reinforced the position of the British for the takeover of India, later.

Aurangzeb was followed by his sons Bahadur Shah I, (1707 - 1712) Jahandar Shah (1712-1713), Mohammad Shah (1719-1748), followed by five puppets, controlled by favourites and court factions. During this period, Nadir Shah of Persia invaded India, sacked Delhi in 1739, and defeated the Moghul forces at Karnal. And between 1747-1760, Afghan Ahmad Shah Durrani made ten invasions and, in 1761, was victorious in the Third battle of Panipat. The Marathas and the Moghuls could not save themselves. Then, came Shah Alam II (1759-1806) and Akbar II (1806-1837).

By 1809, the East India Company had practically taken over Delhi. Bahadur Shah Zafar (1837-1857), the last Moghul emperor, ruled in name only, over a small patch in the Red Fort and around Delhi while the British resident supported by his army, exercised political power.

The great rebellion of 1857, started by Indian sepoys, called the First War of Independence, followed and was brutally crushed by the British. Bahadur Shah was implicated by the British, exiled to Burma, where he died a prisoner's death in 1875. Thus ended the Moghul empire, founded by Babur in 1526 A.D., which ran through seven important generations of emperors, who were an odd mix of secular and fanatic, ruthless and weak, art connoisseurs and its haters, builders and destroyers, lovers and lechers, ending with a weak, ineffective and incompetent ruler and poet, Bahadur Shah Zafar in 1857, leaving behind numerous shining monuments and memories of their dynasty.

A British Resident was appointed in 1857 for Delhi, who exercised all power and authority. Queen Victoria was proclaimed Empress of India on January 1, 1858.



## II

The story of the colonisation of India will now be retold briefly but first it would be appropriate to deal with the subjugation of Kashmir by foreign invaders and changes resulting therefrom.

Although chronologically it might have been useful to deal with the political changes that befell Kashmir since the end of the Hindu Kingdom, and to put these in a comparative year-wise sequence with the happenings in North India, it was felt expedient, due to conceptual and tactical differences in the subjugation, to allow the Delhi Sultanate and the Moghul kings to run their historical courses without interruption and possible confusion, and only pick up the threads of the Kashmir story at the end of these eras.

The role of dynasties in the Hindu kingdoms of Kashmir was not only noteworthy but distinctive. Instances of election of kings by people's vote, through a democratic process, are on record, like that of Vopyadeva in 1171 A.D.

Before discussing the subject of the demise of the Hindu kingdoms in Kashmir in the early fourteenth century, reference in passing, may be made to the Hindu Shahi dynasty of Afghanistan. Both Kalhana (*Rajatarangini* VI-178) and Al Beruni 997-1030 A.D., in his book, *India*, refer to the Hindu Shahi rulers of Kabul and Gandhara (later called Kandhar). It would appear that some Hindu Shahis vacated Kabul and moved to Udbandhpura, the capital city of Gandhara, situated at Waiwind (the other name is Und), 15 miles from Attock. The Hindu Shahi Kingdom became a very important strategic buffer in preventing the Turks, Central Asian Muslims and Mohammad Ghazni from attacking India and later from invading Kashmir.

Though it is not easy now to be certain as to what twists and turns Indian history might have taken if the Hindu Shahis had stayed on in Kabul and prevented the invasion from Central Asia, or even alternatively had delayed their advance for centuries. We could also have saved thousands of human lives and future invasions might have been discouraged. A Brahmin wazir "of great power and influence" seized the royal throne of the last Turkish



king and became the founder of the Hindu Shahi dynasty in Afghanistan. According to Al Beruni, the new ruler was called Kallar (which to Kalhana sounded Lalliya Shah). Both historians affirm to his political power and refer to his being an energetic ruler; mention is also made of his successor Kamalarcha, or Bhimashahi of Udbandhpura, the grandfather of the famous queen Didda of Kashmir (980 - 1003 A.D.).

Reverting to the main story of the subjugation of Kashmir after 1301 A.D., King Suha Deva (1305 -1324 A.D.), was not the last Hindu ruler of Kashmir. Though believed to be a weak administrator, he stabilised the conditions of the State and apparently things were getting easier for him and the people. However, unfortunately, he had to face an armed attack from the east and simultaneously from the north, which he could not withstand.

In 1320 A.D., Dulcha (Ali Zulkadar Khan), a descendent of Chengiz Khan and a general of the Kama-Sena army, with 60,000 horsemen, raided and ravaged Kashmir from Turkistan. Suhadeva offered to pay a large amount of money to save the people but Dulcha was not satisfied and inflicted intolerable miseries on them for three months. He took 50,000 brahmins as slaves, converting others forcibly. Suhadeva fled and went into hiding. The Brahmin slaves, men and women, perished in a snow-storm at the Devasar Pass.

From the north, at the same time, Rinchana, son of a west-Tibetan chief, a Bhotta, arrived through the Zoji-La pass, occupied part of Kashmir and embarked upon selling Kashmiris as slaves to the Tibetans. With Dulcha gone, Rinchana tried to strengthen his hold on the State but was thwarted by Ram Chander, the commander of King Suha Dev's army, who had taken over control. However, Rinchana treacherously killed Ram Chander and made himself the ruler of Kashmir, marrying Kota Rani, the daughter of Ram Chander.

The story of Rinchana's desire to embrace Hinduism and the refusal of Hindu priests to accept his conversion and his subsequent conversion to Islam has not been conclusively proved. Rinchana



apparently did not introduce Islam to Kashmir. He died in 1324 A.D., and king Suha Dev's brother, Odvandeva, ascended the throne and ruled till 1327 A.D. He was indeed the last Indian king in Kashmir and died in 1328 A.D.

There are indications from Kalhana, Jonaraja and other historians, that stranded armed men, invading from Central Asian areas, described as Turushkas (Turks or Muslims), did not return home after the invasions were over but regrouped and made themselves into mercenary forces, taking up employment as fighters with Hindu or other non-Muslim rulers. The Hindu kings employed them for their security and often put them in charge of such forces. Though these soldiers were courageous, fought well, lived hard lives, reposing trust in them and their commanders proved suicidal for some kings. The rulers, by not setting up appropriate supervision and control procedures and not controlling the activities of these foreigners, courted trouble. In addition, many Persians and other victims of Mongol invasions had slowly crept into the kingdoms and other territories, settled down in communities and practised and promoted Islam. Their preachers attracted many converts to their religion, adding to their numbers, step by step, without any hindrance from the local authorities.

In 1313 A.D., Shah Mir "a foreign Muslim adventurer came to Kashmir" and inveigled himself into the good favours of the king and kept aloof from any conspiracies against the ruler. When Rinchana died in 1324 A.D., Odvandeva, brother of King Suha Deva, was crowned, and supported by Shah Mir, married Kota Rani.

Odvandeva was deeply religious, exercised power successfully, warding off an attack from Achala, a neighbouring invader, with Shah Mir's help and ability. Odvandeva died in 1338 and Queen Kota took over but did not take precautions to protect herself. Shah Mir besieged the fort of Kota Rani and took over the kingdom in 1339 A.D., becoming the first Muslim ruler of Kashmir and founded a new dynasty under the title of Shamsudin Shah. Kota Rani refused to marry Shah Mir and committed suicide.



Shah Mir started off well; restored and succeeded in reviving the prosperity of the State but had only a short reign of three years and died in 1342 A.D. His eldest son, Jamshed, ruled for a few months and was deposed by Ali Sher, his brother, who could not consolidate his power for nearly two years. Ali Sher (Allaudin 1342-54), however, ruled for 12 years peacefully but in economic misery. He was followed by his brother Shabuddin, who reigned for 19 years (1354-1373), a man of strong will, who made many conquests, expanding the kingdom to the north, overcame the Gandharas and advanced upto the Hindukush. He also went towards the south, though there were hardly any permanent extensions to his territory.

Amongst the Muslim sultans of Kashmir, Shabuddin had a comparatively good reign. He showed benevolence for Hindu temples and deities and spared them from destruction. He died in 1373 A.D., and his son Qutubuddin took over, carrying on for 10 years till 1389, without distinction but not as a fanatic.

Then, came Sultan Sikander<sup>15</sup>, son of Qutubuddin, about eight years of age, under the regency of his mother, who groomed him for 12 years as a tough and fanatic ruler. He was known as Sikander, the iconoclast, a "religious zealot, whose persecution of the Hindus was terrible and the treatment of the people made them so miserable that they prayed for delivery from his rule, but it went on for 23 long years, i.e. till 1413 A.D. Most of them ran away as far as South India & Maharashtra and settled there. He was helped in his depredations by his minister Sohabhatta (a Hindu convert whose Muslim name was Saifuddin)".

"After destroying most of their temples," Lawrence says, "Sikander turned his attention to the people, who worshipped there and he offered them three choices: death, conversion or exile." Farishta, a Muslim historian, says, "Sikander issued orders proscribing the residence of any person other than Mohammadans in Kashmir."

During Sikander's time, a large number of Hindus were converted and a veritable flood of Muslims migrated into Kashmir from outside. "Tradition affirms that only 11 families of Hindus



remained in the Valley'', says Lawrence. Sikander banned wine and music, making life dull and dreary for everybody. He died, a bigot, in 1413 A.D.

Though Shah Mir and his successors up to Sikander used Sanskrit as a court language and recognised its use, the latter introduced Persian for the first time, and appointed foreigners to high posts. The Pandits were forced to learn the Persian language for their livelihood.

Sikander was succeeded by his son, Mir Khan, under the royal name of Ali Shah in 1413 A.D., and strictly followed his father's fanatical policies. In 1422, he was replaced, after a row, by his brother Shahi Khan (alias Zainulbidin)<sup>16</sup>, a youth of 17, who proved to be the greatest Sultan of Kashmir and ruled for 51 years, in peace, communal harmony, amity and prosperity, giving a great fillip to arts, crafts, agriculture and other developmental activities. He was a linguist, a just and knowledgeable administrator, who spent seven years in Samarkand with Timur and returned to Kashmir in 1405.

Sikander sincerely tried to remove the great injustices done to the Hindus and encouraged those of them who had fled Kashmir to return, on assurance of restoration of their religious rights and withdrawal of restrictions against them, imposed by his two predecessors. He reduced land taxes, gave other facilities to the cultivators.

There is an interesting story behind Zainulbidin's removal of the poll tax (*Jazia*) on the Hindu residents of Kashmir. A Hindu hakim, Shri Buth, cured the Sultan of a serious and treacherous disease and on recovery, the Sultan asked him to name a reward of his choice. The Pandit responded that he had merely done his duty and wanted nothing for himself or his family. The Sultan insisted on rewarding the Pandit and after great persuasion, Shri Buth, hesitatingly pleaded for the removal of *Jazia* and other discriminatory acts on the Hindus. The Sultan obliged.

Zainalabidin ushered in peace, attacked corruption, crime, reorganised the armed forces, encouraged good neighbourly relations, promoted arts, crafts and industries. He was fond of



music, encouraged dramatic performances and dance, fairs and festivals. He was a great builder of palatial buildings, canals and beautiful gardens. He motivated interest in learning and scholarship of Sanskrit and the shastras, in libraries and institutions of education, took part in Hindu religious ceremonies whenever invited. Truly he was a badshah, which in Kashmiri means, a great king. He died in 1474 A.D.

A parallel can be drawn between the Mughals in India and the Shah Mir sultans in Kashmir. The Mughals had produced Akbar the Great and Aurangzeb, the fanatic, while the Sultans raised Sikander, the iconoclast, and Zainulabidin, the noble-minded.

Sheikh Abdullah, in his autobiography, has remarked: "Zainulbidin's favours to the Brahmins were so open that his court historian Jonaraj had written that the Sultan was patently partial to them. In actual fact, the foundation for true secular tradition was laid by Sultan Zainulbidin "Badshah" in Kashmir. In this he unquestionably takes the pride of place for blending the beauty of the distant stars with that of the Indian spirit. The credit for laying the bedrock of the right secular traditions must go to this Sultan. In this context it might be stated with some regret, that this great Kashmiri's work has not yet acquired its rightful place and appreciation in the annals of India. Mughal-e-Azam Akbar, a hundred years later, merely imitated this Sultan." (Translated from *Aatischee Chinar*).

History, however, recalls one black mark against Akbar. "To win the title of a Ghazi-slayer of the infidel—he cut off the head of a Hindu prisoner with one stroke of his scimitar," says Durant.

"Akbar unknowingly emulating the approach of the great Ashoka, earlier, in the eighteenth century, realised that he was ruling a multinational, multi-religious empire and the best way to stabilise it, was to be equitable," says L. Schulberg, in her '*Historic India*', a lesson tragically Sikander, Aurangzeb and others ignored.

Zainulbidin had three rebellious sons, who had to be suppressed. He died in 1470, and was succeeded by Hyder Khan alias Haidar Shah. The latter was a notorious drunkard and debauch and a barber friend, Poorna, gained much power during



his regime. He reverted to Sikander's practices in dealing with other religions, but he had a short reign of over one year and died in an accident. His son, Hassan, was made king. Hassan had his nobles feuding amongst themselves and became weak but he revived liberalism and started building activities, encouraged music and musicians. He died in 1484. It was during Hussain's rule that a large number of Sayyids as Maulvis, preaching Islam, entered Kashmir, discouraged learning at the existing Sanskrit schools and instead pushed the students into Maktabas. The Sayyids slowly gained considerable influence with the rulers and converted large numbers to Islam. Then Fath Khan, son of Azam Khan, took over the kingdom with the help of the Lodi governors of the Punjab in 1486, and, continued till 1495, under great economic difficulties, when he was dethroned by Emperor Jehangir.

Mohammed, son of Hassan, a boy of seven, was crowned king, losing his throne thrice and regaining it and then dying as a titular king. Mohammed ruled for about two years, from 1514-16 and between 1516-28. Nazuk Khan, son of Fath Khan, ascended the throne in 1529 and lasted till 1530. Finally, Shamasuddin, son of Mohammed, came to power in 1537, and carried on till 1560. He was the pawn of his nobles, Chaks and Magreys, who dominated the kingdom, weakened after the reign of Hyder and Hassan. Thus came to an end the rule of the Shahmiri dynasty in Kashmir in 1560 A.D., having been founded in 1339.

The Chaks, a warrior tribe from Central Asia, had come to Kashmir during Sehdeva's rule and lay low without avowed political aspirations. Though they had risen in arms against Zainulabidin, they were punished and tamed. They mixed well with the locals and considered themselves as Kashmiris, not belonging to the ruling class. In some civil wars in Kashmir, they played a cooperative role, with the weakening of the Shahmiri dynasty. Before his death, Sultan Hassan in 1787, tried to set up a royal council but in vain. The Chak and the Magrey tribes belonged to the martial classes and dominated Kashmir.

The priestly Sayids, due to their religious influence and relation with royalty (when their daughter was married to the ruler), supported by the moneyed class in their proselytising activities and



contact with immigrant foreigners, also exercised considerable influence as power brokers but not to the extent of taking over power themselves. The Magreys declined further and had little influence left. The Sayids, fighting the tottering regime with money and men, sought the help of King Paras of Jammu but without success.

The Chaks emerged stronger establishing the Chak dynasty, mostly of Shia faith, eight of whose rulers, reigned over Kashmir for 33 years (1553-1586). The first Chak ruler was Qazi Chak and the last, Yakub Chak. The chaks also converted a large number of Kashmiri Pandits to the Shia faith and antagonised the Sunnis, resulting in Shia-Sunni riots in Kashmir.

The Sunnis later urged Akbar to intervene and free them from their troubles. Akbar ordered an expedition to take over Kashmir, but failed. However, in 1586 A.D., Yakub Chak was defeated and Kashmir became part of the Moghul kingdom. Thus ended the Chak interlude of 33 years of suffering and troubles for the Hindus, as well as for the Sunnis. This also showed how Muslim subjects in Kashmir invited foreign Muslim rulers.

A brief review of the Shahmiri dynasty may be in order here, particularly as it affected the oppressed Hindus. Even as Sultan Zainulabidin rehabilitated the Hindus, Islamic missionaries, the Sayids and others, were active in forcing conversions and destruction of religious properties. The *Jazia*, though withdrawn, was brought back and no Kashmiri Hindu could live there without penalties and punishments and maintain himself in peace and dignity. Unemployment was rife among them and generally they lived in poverty, with no voice in the administration. Though some Shahmiri sultans sometimes showed a charitable disposition, no serious attempt was made to assuage the feelings of the Hindus.

The Chaks, in their 33 years of ruthless rule, did no better, adding to the continued misery of the Pandits. After the Chaks' ouster, Akbar arrived in Kashmir in 1588 A.D., and spent a few months studying the political, economic and social conditions. He was struck by the poverty of the people and the desolation they suffered. He desired peace and equity for all communities and eliminated trouble-makers. The Pandits were freed from religious



intolerance and fanaticism and they ventured to take part in social activities. They were admitted to government jobs and a new vista opened greater prospects of employment, from a state of anarchy and chaos. Education, trade and commerce had suffered, living conditions were hard but the Pandits did not involve themselves either in civil wars or power play.

Akbar soon realised the usefulness of the Pandits and decided to use them in creating peaceful conditions, devising ways and means for the people's livelihood while exempting them from punitive taxes and exactions. He took necessary steps to rehabilitate them and offered them responsible jobs, as a respectable class. Akbar also took part in their festivals, which gave these people added confidence. It will be noticed that the link with the Indian empire was restored which promoted commerce and trade in Kashmir.

As a part of Moghul India, the Pandits were politically harmless and not anti-Government, while Kashmiri Muslims, especially notables, were rightly or wrongly politically suspect, and were not encouraged in the administration. Peace and progress were brought about, with the Kashmiri Muslims thriving in commerce, as they could not go against a powerful Government. The Pandits made contact with the high-ups in Delhi and established colonies there and at Agra, advantaged by the knowledge of Persian that they had learnt. Many Pandits acquired favourable positions at the court of the emperors and were rewarded with *jagirs*, while establishing social and political links with the Muslims.

When Akbar left Kashmir in 1589, he appointed a governor (*subedar*) to represent him and left behind a unit of the Moghul Army for safety and security. Very few Kashmiri Muslims made a mark during the Moghul rule in Kashmir, which did not please them. They were, as stated earlier, assisted in trading and commerce, in particular, the shawl trade, through which they amassed wealth, but they were not associated with the administration like the pandits. The latter also took to creative literature and wrote books.



The Pandits were trusted even as commanders, some with distinction like Miru Pandit, who saved Jehangir's life. The crusade and success of Bulaqi Pandit against the Yagistanis goes very well with the annals of the Pandits. However, many Kashmiri Muslim nobles could not reconcile themselves to the positions achieved by the Pandits under the Moghul administration. The resulting resentment promoted antagonism amongst people, like Mulla Yusuf in Shah Jehan's time, and antipathy amongst other people. But even during Aurangzeb's time, some Pandits did well. The Moghul rulers adopted the same policy in Kashmir as they had followed in India.

Akbar's conquest of Kashmir ushered in an era of modernisation, but the Moghuls declined steadily and by Aurangzeb's death in 1707, their power waned and their glitter almost vanished. The successors exercised power in Kashmir through governors (*subedars*) who terrorised the non-Muslims and exacted heavy taxes from them.

In view of the policies followed by the Moghul rulers in India, as explained above, it is not necessary to go into fuller details regarding the changes in fortunes of the Kashmiri Pandits during the Moghul rule on its last leg.

A new Afghan (Pathan) chapter of subjugation of Kashmir began with the death of King Nadir Shah, ruler of Afghanistan, and his succession by Ahmad Shah Abdali in 1747. The Kashmiri Muslims, in order to regain their influence and power lost in Moghul times, especially the nobles and businessmen, pressed Ahmad Shah Abdali to invade Kashmir and defeat the disintegrated Moghuls. The last Moghul King, Ahmad Shah's rule ended in 1753, and Kashmir came again under the control of the Afghans. However, Abdali's representatives, especially Aqassi, brought terrible oppression and cruelty to the people of Kashmir, including Muslims.

Sir Francis Younghusband, says in his book titled, *Kashmir*, that "the Pathans proved to be the cruellest masters the Valley had ever seen. It was said of them that they thought no more of cutting of heads than of plucking a flower".



With the Durrani rulers, Kabul became the capital of Kashmir, instead of Delhi, and was ruled from there by nominated governors. It is, however, of interest to note that the Afghans appointed many Pandits to administrative jobs in Kabul despite the cruelty suffered by this community.

W.R. Lawrence, <sup>16</sup>in his book, *Valley of Kashmir*, has said: "While passing from the Moghul period to the Afghans, we pass to a time of brutal tyranny, unrelieved by good works, chivalry and honour. Men with interest were appointed as governors, who wrung as much money as they could out of the wretched people of the valley." The Afghans turned out to be the worst of the new and the old administrators.

Of the new chapter of Afghan rule in Kashmir, George Campbell, in his book, *Ethnology of India*, says, "The Valley never belonged to the Afghan nation, but was retained as a crown appanage of the kings, who were very jealous of admitting into it subjects whom they might find difficult to turn out again, and much preferred to govern with the Pandits."

Mir Muqim, in and out of power as an intriguer par excellence, made the lives of the Pandit administrators difficult, involving them in false cases and creating difficult conditions for peace, rehabilitation and progress. Kailash Dhar's regime was an oasis in a desert, but he eventually left for Kabul, where he died, and Kashmir had *subedars* like Amir Khan, whose debauchery and cruelty were notorious.

### **Kings of Afghanistan**

Ahmad Shah Abdali of the Abdali tribe was chosen in 1747 by his tribe, after Persian King Nadir Shah's assassination, as leader, and he assumed the royal title of Durrani. He took over Kashmir in 1753, and, in 1761, battered the Marathas at Panipat. He died in 1773, succeeded by his son Taimur, in whose reign Sindh was lost and revolts brewed in Kashmir and other territories.

Taimur died in 1793, leaving 23 sons and his fifth son, Mohammad Zaman Mirza, ascended the throne. In 1800, Mohammad, another son, ousted Zaman, who, in turn was deposed in 1803, and Shuja-ul-mulk was enthroned at Kabul. Shah Shuja's



rule was unpopular and he had to quell a rebellion in Kashmir, started by his governor. Mohammad, his brother deposed him and ascended the throne, ruling till 1818 A.D. Thus, five Afghan kings ruled Kashmir from 1753 to 1819, under the Durrani dynasty, two of them Mirza and Mohammad, reigning for two terms each.

*Subedars*: During the above period, 28 *subedars* (governors) were appointed, eight of them revolted against their king and six were murdered. *Subedars* to govern Kashmir were appointed by Kabul, occasionally assisted by able executives and their duties included governance, increased collection of taxes/tribute, implementation of religious policies and they were also authorised to appoint their own relation on relinquishment of their charge.

### **Some Features of Afghan Rule**

Restriction on religious practices were imposed, poll taxes (Jazia) fixed, curbs on movement, dress and way of life of non-Muslims enforced; also there was systematic destruction of religious properties, forced conversions, confiscation of properties of Hindus, prohibition on the study of the Persian language, as a means of employment, and curbs on migration, or exit. Therefore, departures from Kashmir involved punitive risks, yet many persons and families secreted themselves away under hazardous conditions to other parts in India.

Apart from Afghans, Kashmiri Pandits of repute, experience and confidence were selected and appointed to senior posts in administration, even rising up to *subedar* level, but were helpless to prevent atrocities against their own community. Systematic intrigues prospered against appointed administrators, some got killed and others were accused of uncommitted crimes. The attitude towards migrant Pandits living in Kabul was more sympathetic and Pandits like Nandram Tikku, Sahaj Ram Dhar, became *dewans*, and were trusted.

Punishments were severe and cruel and many attempts were made to eliminate the Pandits in groups. Social, economic and political conditions in Kashmir were unstable, with shortage of food stocks, limited help in facing calamities, no financial aid or programmes for poor people.



The breach of understanding reached in 1813 on the Attock Fort, between Maharaja Ranjit Singh and the Afghan *subedar*, led to serious differences and precipitated into a military conflict, in which the Sikh forces, who initiated the attack, were defeated and the Afghans emerged as victors.

The Pandits were, however, suspected and accused of inciting the Sikh attacks against the Afghans and reprisals against them started. Pandit Haradas Sahebkar, chief executive in Kashmir, was the first to be killed and many other Pandits lost their lives, their *jagirs* were confiscated and *Jazia* tax was reimposed.

The Muslim leadership decided on wholesale destruction of the Kashmiri Pandits, and their elimination from administration by a conspiracy to invite the leaders and collectively suffocate them in a *Hamam*. The Pandits smelt a rat and were also tipped off. Mirza Pandit and other leaders secretly left and the attempt to eliminate them was foiled, to the disappointment of the Afghans and local Muslim conspirators.

Later, *Subedar* Azim Khan appointed three Pandit revenue collectors, Mirza Pandit, Birbar Dhar and Sukhram, making them personally responsible for revenue collections, fixed very high. Birbar Dhar could not raise a lac of rupees, due to the failure of the crops, yet he was pressed to make payment and threatened. The Pandits realised the real reasons for the *subedar's* behaviour. They met in a secret conclave to assess the situation and decide upon a course of action. Their conclusion was that there was no hope or alternative left for them in order to save the community, except through a successful invasion of Kashmir by Maharaja Ranjit Singh, to free the people and the country from foreign rule and fanatics.

Birbar Dhar was to leave Kashmir alongwith his minor son Rajkak, secretly, proceed to Lahore and petition Maharaja Ranjit Singh. Necessary precautions were taken and the party successfully crossed the Pir Panchal Pass in Kashmir before search parties could reach them. However, the wife and daughter-in-law of Birbar Dhar were traced in Srinagar and taken into custody and tortured. Birbar Dhar's wife killed herself by swallowing a diamond, after



prophesying and declaring that the Afghan rule in Kashmir was coming to an end. The daughter-in-law was forcibly converted and handed over to an Afghan noble, who took her to Kabul.

After the arrival of Birbar Dhar in Lahore, many other Pandits joined them in their mission, and seeing Raja Gulab Singh of Jammu en route, they secured a letter of introduction for the Prime Minister of Maharaja Ranjit Singh. They had an audience with the Maharaja and presented their case most persuasively. Birbar Dhar agreed to stand surety for losses, if any suffered, and consented to his minor son, Rajkak, being held as hostage till the operations were over.

However, *Subedar* Azim Khan scented trouble and Sahib Ram Dhar recommended the despatch, post haste, of his family back to Kabul. And he personally escorted them to safety, rather than allow the fate of Birbar Dhar's family to be visited upon them. Azim also left Kashmir, leaving its administration in the hands of his brother, Jabbar Khan.

Maharaja Ranjit Singh assembled an army of 30,000 strong under generals Gulab Singh, Hari Singh Nalwa and others, and they gave fight to Jabbar Khan and his forces. The Afghans fled while Jabbar died, being wounded, near Baramulla and most of his men were killed. On June 20, 1819, Birbar Dhar and his brave supporters, together with the Sikh forces, emancipated Kashmir from the curse of foreign rule and entered Srinagar in glory with the foreign invaders having no chance of return.

Birbar Dhar's limitless courage, extraordinary zeal, love of people, selflessness, his sacrifice and great ability, had won for the country a liberation worthy of great patriots and a place for him in letters of gold in the chequered history of Kashmir.

When the Sikhs conquered Kashmir, like all victors they would have repaid the Afghans and their supporters with all the tyranny suffered, in the same coin in which they had received it, yet it was Birbar Dhar who prevented the plunder and carnage of Kashmiri Muslims and destruction of the *Shah-i-Hamdan* mosque and other religious places. It was his courage that saved the local Muslim population from disaster because of the traditional brotherhood of the Muslims and Hindus avowed by him and other Pandits. Yet,



instead of showing deep gratitude to him for their emancipation, they criticised Birbar Dhar for inviting help to free Kashmir from foreign rule which is purblindness in its extreme.

It may perhaps be relevant to quote the observations of Pearce Garvis on the woes of Kashmir: "In these few pages it has only been possible to skim over the surface of the deeply interesting history of a State, which has been under the rule, mostly cruel, harsh and savage, of so many foreigners, each in turn forcing their religion upon the people, offering them either a ghastly death or submission, and wringing from them all the labour, taxes and produce that they could extract. Their good rule, or misrule, has left its deep marks upon the land and those who lived there; a people with qualities, good or bad, are to a very great extent, a result of all this."

The pity of it all is, that the brunt of the fanatical march of events in the long period of the Islamic history of Kashmir, should have been borne by the Pandits in Kashmir, whose wails can be heard even today. It is, however, gratifying that they played a leading role in freeing Kashmir from the clutches of the foreign invaders.

### **The Sikh rule (1819-1846)**

British apprehensions and activities about the creeping influence of Russia in Central Asia and steps taken to protect their empire have been described in chapters 2 and 3. The signing of the Treaty of Friendship of 1809 with Maharaja Ranjit Singh, demarcating the territories along the north and the south of the Sutlej river respectively, was part of the British game-plan. Consequently upon the defeat of the Durrani ruler in Kashmir in 1819, the forces of Maharaja Ranjit Singh took over and Kashmir became part of the Sikh kingdom with its capital at Lahore. During 27 years of Sikh rule, ten designated governors (*dewans*) held their posts in Kashmir. Taxation increased and every trade and profession came to be taxed heavily. The Hindu convert Muslims of earlier regimes suffered a double jeopardy as Muslims.

Administration was in a mess and the governors proved incompetent and ineffective. Calamities, like an earthquake, famine, and cholera epidemics devastated Kashmir. Many hill



chieftains rebelled against the harsh rule and Shia-Sunni relations also deteriorated. Skardu was in a turmoil and had to be suppressed. The Pandits held good administrative jobs but were the cynosure of Muslim eyes. The Sikhs imposed restrictions on the public practice of the Muslim religion, but no mosques were destroyed. Land cultivators had to pay heavy taxes without any incentives for tilling the land. Food shortages led to famine conditions and aggravated the suffering of the people. Gifts (*nazranas*) were demanded on a substantial basis from Hindus and Muslims. But conditions changed somewhat during Mian Singh's governorship in 1834, when food was imported and sold cheaply; however, unemployment was rampant.

Maharaja Ranjit Singh was under pressure from the British, who did everything possible to weaken his rule. He died in 1839 and palace intrigues for succession intensified. Mian Singh and Ganesh Pandit, two competent administrators, were killed. To placate the Muslims, the Sikhs appointed a trusted Muslim as governor of Kashmir in 1841. The Jama Masjid was thrown open to public prayers again and this act was appreciated. This governor died after a short-term and was replaced by his son who also helped the traders and cultivators and took some relief measures, though without long-term benefits.

In the meantime, the struggle for succession, coupled with British intrigues in the Punjab, involved the Sikh armies in war with the British forces: in 1845 at Mudki, and in 1846 at Atwal. The Sikh Government in the Punjab collapsed, and the last ruler, Lal Singh, was deposed. The final defeat of Sikh forces came about on February 10, 1846, at Subraon, after which the British forces marched into Lahore, as victors. The Treaty of Lahore was signed between the Sikhs and the British, on March 9, 1846, and the Treaty of Amritsar was concluded between the British and Raja Gulab Singh of Jammu, on March 16, 1846. Kashmir was ceded to Raja Gulab Singh in lieu of Rs 75 lacs paid by him in cash, claimed as war reparation. This ushered Kashmir into the domain of Raja Gulab Singh, who became Maharaja of Jammu & Kashmir, and it brought down the curtain on the Sikh rule of Kashmir.



**Milestones of Dogra Rule in Kashmir**

In 1846, Kashmir came under the suzerainty of the Dogra Rajputs, by virtue of the Treaty of Amritsar and was ruled by Maharajas Gulab Singh (1846-1857), Ranbir Singh (1857-1885) — who extended their reign to Ladakh and Gilgit— Pratap Singh (1885-1925), and the last, Hari Singh (1925-1947), who acceded to India on October 26, 1947, under the India Independence Act of 1947, after hundred years of Dogra rule. Dr Karan Singh,<sup>17</sup> the heir apparent took over for sometime as the first elected Head of the State of Jammu and Kashmir. But soon it ceased to be an independent sovereign State. It became a federal unit of India, as its integral part. Kashmir's constitutional position is explained in detail in chapters 5-10.

We have come to the end of our survey of the subjugation of India and Kashmir by foreign invaders and their successor dynasties, which present obvious lessons for India's future, including the need to ensure the protection of sovereignty, security and territorial integrity of the country. Though the last two dynasties, that is, Sikhs and Dogras, were not foreigners, we have included brief references about them to conclude the history of Kashmir as an independent State.



### Notes

1. *Historic India* by Lucille Sohulberg (*Great Ages of Man, Time Life Series*), 1969 - Page 14. The northern boundary of India was virtually a wall 150 miles thick, 2,000 miles long and about 5 miles high.
2. Ibid - Pages 16 - by 1500 bc. Series of invasions took place.
3. Ibid - Page 32 - 34, Discovery of Indus Valley Civilisation and Aryan Invasion.
4. Ibid - Pages 155-158 - Other invasions.
5. *The Story of Civilisation, the Oriental Heritage* Vol - I, By Will Durant - Pages 392-395. 1935 - New York.
6. *Dancing with Shiva* by Shiva Subramaniamswamy, Himalayan Academy, Concord, California - 1990, Pages 607 - 609.
7. Boston Globe Daily - Boston, Article on *Debunking the Aryan Invasion Theory*. May 1995.
8. *The Story of Civilisation* - by Will Durant Vol I - Page 459, Invasions of India.
9. Ibid - Page 463.
10. Kalhana's *Rajatarangini*, by Aural Stein-Vol-I Book I, Verses 298-309.
11. *Indianised States of Southeast Asia* by G. Coedes (T.R. Susan Cowing), 1966, Pages 34-35.
12. *The Wisdom of India* Ed., by Lin Yu Tang, JAICO, 1956.
13. *The Story of Civilisation* by Will Durant Vol - I, Page 474.
14. *The Delhi Sultanate (History and Culture of Indian People)* Vol - VI Ed. by R. C. Mazumdar. Third Edition 1980. Pages 313-315.
15. *The Valley of Kashmir* by Walter Lawrence, 1895. London, Pages 190-191.
16. *This is Kashmir* by Pearce Gervis, 1954 - London, Pages 49 - 55, and 67-68.
17. Karan Singh was appointed ruler on June 24, 1949. On abolition of monarchy in J&K State by a bill of November 14, 1952, he was elected the first Head of State.



## Chapter 4

### *Colonisation and the Future*

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It may be appropriate to explain the term colonisation and outline its implications for a better understanding of its dimensions. Colonisation<sup>1</sup> includes the policy and the practice of a power to extend and exercise control or authority over people other than their own nationals or citizens, by the systematic process of exploitation. It involves gaining dominion and power over territories of others, beyond their own geographical limits, by force, deceit or diplomacy. It also means transformation of such people and areas into dependent subjects and territories respectively, while supremacy is exercised through direct rule or distant territorial administration.

The objective is to provide for its own nationals' religious, racial, political, economic and other benefits at the expense of the colonies. The interests expand or diversify in a colonial relationship, depending upon circumstances and opportunities, but are conditioned by advantages to the ruling power.

The process of European colonisation of India began in 1498 at Calicut, and the new subjugators proved to be more subtle, more pernicious and more perilous.

The success of ships and seamanship provided sea power and the mobility to seek and acquire colonies; though trading was the basic motivation, it led to areas of exclusive influence and monopolies.

The Industrial Revolution demanded greater interchange of goods produced and more raw materials. Political dominance followed economic dependence. Downgrading and perversion of the civilisation, culture and the rich traditions of colonies, provided



arguments for justifying overlordship and excuses for declaring their unfitness for self-rule. In following these goals, everything was right, no matter, how unauthorised, unjust, unfair and unethical.

The history of colonisation shows that the earliest colonies of Phoenicians, Greeks, Romans, Spaniards, Portuguese, Dutch and the British resulted in wars and changed hands. India's maritime trading with the Greeks, Romans, Arabs, East Asians and other countries has been known through antiquity but it created no colonies.

The lure of India and its many products, especially spices, invited great attention in the West and efforts were made from time to time, to reach India and for cutting out the intermediary 'Moors'.

When the Portuguese<sup>2</sup>, a leading nation of ship-builders and keen seamen, anchored off Calicut with the help of an Indian navigator on May 20, 1498, with four ships and Vasco-de-Gama on board, the event proved epochal. The Portuguese requested permission to trade, which was granted, after preliminary difficulties and differences with the Hindu Raja (*Zamorin*) of Calicut, and they bought spices and exchanged these with their goods.

The second Portuguese expedition<sup>3</sup> in 1500, led by P.A.Cabral, started with 33 ships and 1,500 men. But only six ships, some armed with cannons, reached India. Cabral demanded a trading post at Calicut and permission to land five missionaries to preach Christianity. Both demands were rejected by the Zamorin. A fight ensued and Cabral left Calicut empty-handed. Cabral, however, went to Cochin and its Raja gave him some concessions, as a result of which Cochin became the first trading post of the Portuguese in India. Albuquerque<sup>4</sup>, the leader of the next Portuguese expedition, occupied Goa in 1509, and made it the capital of the Portuguese possessions in India. He tried to conquer Calicut but was defeated by the Zamorin. This set-back delayed other Western nations from attacking India for a 100 years.

In 1605, the Dutch came with four vessels, especially fitted with cannons, and established factories on the Coromondal Coast, Gujrat and Bengal on their trading route to Java, on behalf of the Dutch East-India Company.



The English East India Company, a small enterprise, received a royal charter from Queen Elizabeth on December 31, 1600, in the name of "the Governor and Company of Merchants of London", for a monopoly of trade to the East and it became a joint stock company in 1612. A British representative, William Hawkins, reached Surat for trading concessions but got none from Gujarat, due to Portuguese opposition, nor any assurance of help from Emperor Jehangir at Agra. However, in 1613, the Moghul allowed Britain to have "a permanent factory" at Surat.

In March 1615, the British ship 'Hope' left India for the first time with cargo. In September 1615, the first British Ambassador to the court of the Moghul, Sir Thomas Roe, arrived in India. By 1619, the British established their posts at Surat, Ahmedabad, Broach, with Surat as headquarters, and heavy trading took place. In 1641, they got permission to build a post in Madras, and by 1647, they had 23 trading posts in the South.

"It set up trading posts, fortified them, imported troops, fought battles, gave and took bribes and exercised the functions of Government," commented Will Durant.<sup>2</sup>

The nation of shopkeepers was selling Indian goods at five times the price they paid for them in India, which shows that they were on the move, and India watched helplessly.

The French took over Pondicherry in March 1670. Bombay Island came to the British crown from the Portuguese king in 1661, and was passed on to the East India Company in 1668. It was found more suitable than Surat and was developed fast—in 1687. A system of English justice was adopted to help facilitate commercial dealings, land reforms were introduced, a mint set up and the first European regiment, the Fusiliers, was raised for defence.

English factories started dotting the landscape on the Coromondal Coast from 1611, and when the Moghuls overran the areas, the status of the East India Company remained unchanged. Cuttack and Calcutta were fortified in 1696, and brought under control of a President and Governor of Fort William in Bengal.

The Portuguese, Dutch and British trading establishments were, however, not powerful enough till 1803, to face the Marathas and vanquish them.



Plassey in Bengal was neither a battle nor a palace revolution but a "transaction" of betrayal of the Nawab by disgruntled, greedy nobles, bribed by the English. European trading companies and powerful Indian responsive business classes emerged around Indian coastal cities, while the economic condition of the people deteriorated.

With the defeat of the Sikhs and takeover of the Punjab, the weakening of the Marathas, the ruthless crushing of the so-called "sepoy mutiny" and disintegration of the Moghul rule, the field was open for the British to take over the whole of India between 1846 and 1858, and, there was no threat to their power. The British flag flew over the Red Fort in Delhi from 1858, and India became part of the Empire. Thus was completed the first stage of colonisation of India: first trade and then invade.

The British establishment governed India from London, through the Secretary of State with the Viceroy/Governor General in India as subordinate and responsible to the former. They directed their earliest energies to the revamping and strengthening of the existing disparate administration into a unified one, in accordance with their ideas, policies and requirements of uniformity and pro-British service with a steel frame on the top and a hierarchy down to the district level.

The British directly conquered only three-fifth of Indian territory and two-fifth comprised the loyal native States of Indian princes under their paramountcy.

A conviction of superiority prevailed in the Englishman: "That we belong to a race whom God has destined to govern and subdue", and everything they did was right for the ruler and the ruled. European settlers were granted, under a special law, large areas of highlands to plant and create indigo plantations or other crops in Assam and the Nilgiris. Recruitment of Europeans as the head of these plantations served a political purpose. But the poor man's lot worsened and the country was plundered. Simultaneously, the administration was being revamped with an eye on exercising control and carrying out policies to serve the mother country.



**Taxation and Exaction :** A land tax of 50 per cent was charged on a producer for the areas occupied by the East India Company and two-third on the rest of India, which crushed tillers. Bribery and extortion were rampant.

Robert Clive and William Hastings, Governors of Bengal, represented a class of shameless tyrants, whose names blackened British history. In 1867, Dadabhoy Naoroji, who later became a member of the British Parliament, estimated in his book, *Poverty and un-British rule in India*, that the British looted India at a rate of between three and four million pounds daily, by which, according to his calculations, Britain owed (undivided) India about 111 trillion pounds, excluding acquisitions like the Kohinoor diamond etc.

The exactions through the indigo plantations and trading were exorbitant and exhibited the worst features of English colonisation. While opium was banned in England and China, its plantations were authorised in India and a monopoly was held by the East India Company for its cultivation and smuggling into China.

The Portuguese<sup>3</sup> were the first to send an opium shipment to China from Goa. In 1790, smuggled opium from India by the East India Company increased substantially, and by 1839, reached 30,000 chests annually. China confiscated and publicly burnt 20,000 chests, resulting in an armed clash with Britain, called the first opium war.

The Chinese lost. And, by the Treaty of Nanking in 1846, ceded Hongkong and had to pay a heavy indemnity. In the second opium war, China ceded more of Kowloon to the British. Opium trading continued through intermediaries and the East India Company made huge profits.

After 1858, the British took over the captured Indian territories as a colony of the Crown, paid the East India Company handsomely and added the purchase price to the public debt of India. The British fought 111 wars in India with Indian money and men for takeover and unification of India.<sup>4</sup>

**Divide and Rule :** The British could not face a united and strong India. In order to preserve their empire, they introduced divisive policies and devised ways and means to create disunity amongst



the different classes, religions and communities. They did not hesitate to issue administrative orders and pass laws which accentuated differences, suspicions and misunderstandings, or to manipulate one group against another.

Their policies were flexible, in placating individuals or groups, as long as their objective was achieved. A few examples would be of interest but a detailed discussion on their divide and rule policies would cover volumes. The creation of martial and non-martial classes in the armed forces, made and unmade favourites. Racial superiority of the rulers and the inferiority of the masses, vindicating their rule, sanctifying discriminatory classifications and enforcing obedience and loyalty, was expressed repeatedly. For many years a 'white' person could not be tried in a court of law by an Indian judge. Plantation workers were disabled by excessive managerial authority.<sup>5</sup>

The creation of 562 different native States, with limited powers and privileges, worked as a bulwark against nationalist aspirations and was controlled by locally-based political Residents with the final command emanating from London.

The manipulation of the native rulers in war and peace resulted in subordination and loyal support for more funds and men in wars for implementing imperial directions, suppressing dissent, interference in the internal affairs of States, relinquishment of parts of State territories, grant of 'disorder' authority at State borders, and intervention by the imperial power on behalf of politically useful individuals, groups, or communities, with or without considerations of justice and fair play. In due course, opposition to self-rule in India became a *sine qua non* of loyalty to the government.

The case of J & K State illustrates some of these features. Kashmir's foreign relations were handled by Britain. Britain<sup>6</sup> wanted to control Gilgit and to appoint a political Resident in Kashmir and they did so on the second day of Ranbir Singh's death in 1885.

To force the Maharaja to concede to the demand, a bogey of maladministration was raised against him. An agency was created in 1889, and Kashmir State had to pay for the imperial troops sent



there. Maharaja Pratap Singh was deposed in 1885, and his powers were restored by stages in 1921, after he had contributed men and money for World War I. The State was run during the time by a nominated council, with a veto by the Resident and the resultant administration showed no improvement. Conditions worsened.

Viceroy Lord Reading was shown black flags on October 1924, on his visit to Srinagar, after the brief silk factory agitation. A memorial of grievances was submitted to the Viceroy through the residency employees, who appeared to act as a nerve centre for the agitators. A weak ruler, Pratap Singh, died in 1925, and was succeeded by Hari Singh.

A communal incident took place in Jammu on April 29, 1931, which caused concern, and on July 13, 1931, Abdul Qadir, the non-Kashmiri cook of a British major of the Yorkshire regiment, delivered a most inflammatory and communally surcharged speech in Srinagar. Qadir was arrested and put on trial in the Central Jail; riots broke out and the police had to open fire resulting in 21 deaths, the dead declared as martyrs. Some Hindus were also killed and communal feelings simmered and were intensified by Muslim politicians and media, mostly from pro-British parties in the Punjab.

With Hari Singh's ascension to the throne and his declaration that justice would be his religion and the grant of some relief to the agriculturists and unemployed, the situation eased, especially after the appointment of an Englishman as Prime Minister and the nomination of other officials.

The young ruler, however, was in a hurry and wanted to curb the extraordinary authority and powers of the British Resident and change some one-sided frontier policies.

Herds of people had been imported from the Punjab to man the services and an agitation was launched by the Kashmiris to protect their rights. At the same time, the political developments in British India were having their own impact on the Kashmiri people and creating nationalistic feelings amongst them. The British appointed a commission of enquiry to look into the grievances of the Kashmiris, which was set up on November 12, 1931. A new British Prime Minister, Col. Colvin and three ICS officers, were appointed



to complete the takeover of the State administration. Noticing disparities of communal representations in services, restrictions on religious worship and lack of fora for democratic expression, a reforms committee was appointed by Hari Singh.

But with the takeover of Gilgit, British objectives were fulfilled; their administrators left the state in 1936, and were replaced by an Indian Prime Minister, Sir N.G. Iyengar. The history of direct British administration in Kashmir officially came to an end but seeds of communal differences and bitterness had taken deep roots in Kashmir.

Reverting to the topic of "Divide and Rule" by the British in India, an interesting aspect would bear mention here. They created a surfeit of titles of various categories which stratified Indian society and established a hierarchy of loyal title holders with appropriate status, exercising substantial control, if not influence, over agriculturists, landlords, businessmen, social workers, educationists and others. The aspiration for higher titular status, yoked them to the British machine against their best Indian interests, deepening the division of the people.

Masses of cheap Indian labour was moved to other countries and colonies under official pressure to promote British interest, though partly necessitated by lack of food, clothing and employment in India, which the British failed to provide adequately. Indians were consequently separated from their kith and kin, which generated harsh feelings. The migrant labourers worked very hard helping the economic development of the colonies but the British did not ensure the migrants economic, human and political rights, which left the Indians in serious turmoil and sub-human conditions. Their political status remained undefined for too long in most countries like South Africa, Kenya, etc., Sri Lanka is facing an avoidable ethnic civil war as the aftermath of Tamil migration.

After the Minto-Morley reforms (1909), a small step for the association of Indians with the Government of India was taken; central and provincial cabinets were to have Indian members for the first time. But from the district board levels to municipalities, a diabolical and vicious system of separate electoral rolls for



Muslims was introduced and adopted even against their popular sentiments. It meant that only Muslims could vote for Muslim candidates and Hindus could not stand from Muslim constituencies, nor could a Muslim vote for or be elected from a Hindu seat.

Religion became the foundation of the electoral system, not individual ideology, not freedom of conscience, nor any other basis, thus perpetuating the division of the Indian electorate and people. Public opposition to the system was reflected in terrorist attacks against British officers.

The Partition of Bengal of 1905 was revoked in 1911, seemingly to appease the agitators. The Montagu declaration of 1917 advised increased and gradual association of the Indians with the administration. Muslims considered it as a "threat to communal representation", which reflected the communal mentality created amongst the people.

In 1919, the Montagu - Chelmsford reforms also reserved separate seats for Muslims, Sikhs and Europeans, etc., in the central and provincial legislatures, which did not allay political agitation nor increase cooperation. The Khilafat Movement and the Moplah rebellion did not cement Hindu-Muslim entente.

The Government of India Act of 1935, which codified divisive policies, was described by Pandit Nehru as "a new charter to strengthen the bonds of imperialist domination and to intensify the exploitation of our masses". In the implementation of the Act, the divisions were further deepened.

Even though Sir Syed Ahmed Khan had declared early in 1885 at Lahore, that: "In the word 'nation', I include both Hindus and Mohammedans because that is the only meaning I can attach to it. These are the different grounds upon which I call both these races which inhabit India by one word (that is, Hindus), meaning to say that they are inhabitants of Hindustan." But the policies and actions of the British did not allow them to come closer and belong to a strong and united India, which eventually resulted in Partition in 1947.

The revelations of Khan Wali Khan<sup>7</sup> in his book, *Facts are Facts*, are noteworthy: "History has a way of revealing itself sooner



or later, no matter how much effort is made to camouflage it with petty untruths. The British wanted to protect their empire, no matter what the cost. Britain used the most underhand tactics to promote their policies.”

A study of the weekly correspondence between the Secretaries of State and the Viceroys is most revealing. The Congress accused Britain of creating communal hatred in India to perpetuate their imperialist policies and strengthen their vice-hold. In a correspondence (1922-42), disclosed after research, lasting many years in London, every detail of the policy was clearly stated in the secret documents and how separate electorates would destroy Hindu-Muslim unity. Indian leaders were mere pawns in the imperial game of divide and rule.

The British had planned to construct an ideological citadel of Islam in the territory stretching from Turkey to China, as a buffer against the surge of communist ideology and to encircle Soviet Russia. “The concept of Pakistan was, in fact, a British plan”.

In February 1926, at the Congress of Oppressed Nations held at Brussels, Jawaharlal Nehru had used some prophetic words, which came true. “The first half of the Twentieth century would see the emancipation of Asia and the second half, that of Africa.” Nehru helped in establishing the ‘League Against Imperialism’ which became an effective mouthpiece of this philosophy.

The imperial power ruling India did not then give any thought to quitting and seemed to have settled down to a long reign, happy with their policy of divide and rule bearing fruit. But the weakening of Britain in World War II, the impact of Mahatma Gandhi and the great nationalist movement brought about compulsions they could not cope with. Though initially content that the disunity they had created would be sustained and the Princely States would resist democratisation, clinging to the paramount power, showing their loyalties and happy with their titles: yet, when quitting became the only solution, they decided to leave only when disunity was assured, and divide and quit followed.

To summarise the implications of colonisation of India, it would be appropriate to recall its various dimensions, in the light of



Indian experience, bearing in mind the Englishman's principles enunciated by George Bernard Shaw. "The Englishman does everything on principles. He fights you on patriotic principles, he robs you on business principles, he enslaves you on imperial principles."

The reader will find the following conclusions thought-provoking and invariably true:

- i. History confirms that no colonial power walks out of a colony voluntarily. India had to strive for years to press for their ouster.
- ii. No power withdraws without leaving behind civil strife having been caused by them. The massacres of partition, the exchange of populations, unknown in the history of the subcontinent, confirm this.
- iii. Conditions of armed conflicts were allowed for a Pakistani attack on Kashmir, leaving India and Pakistan fighting three major wars with border clashes and a running dispute, economically damaging to both.
- iv. Colonial powers leave behind unstable, economically dependent countries, short of essentials like food. India remained a food-scarce State for years and had to import large quantities of food, under difficult circumstances. Examples of India have also been repeated in African countries, which were disintegrated by civil strifes, refugee flows, warfare and declining economies.
- v. Indian States emerged free without territorial demarcations coinciding with linguistic religious and/or racial boundaries, and conflicts arose with the need to reorganise States, on one basis or the other.
- vi. British policies of protection of special groups, for example princes, landlords etc., was used to obstruct the advancement of the general good of the people.
- vii. The colonial power did not correctly perceive and apprise the damage done to India by political, economic and religious pressures and machinations to dominate and weaken it by policies, but expressed disgust for India's backwardness by



calling it a "white man's burden". However, the textbook benefits of the British Raj were popularised and praised tendentiously, with a bias, rather than in absolute correctitude.

- vii. The work of foreign missionaries, especially in the tribal areas of the Indian States, created serious problems for free India, particularly in the North-East.
- ix. Britain played a positive role in the affairs of India's neighbours in Afghanistan, Burma, China, Tibet, Sri Lanka, before its independence, but peaceful relations, free from disputes were not established. The understanding with China was not ratified and the borders were not marked, which created complications for independent India. Similarly, territorial or ethnic disputes were inherited with other countries.
- x. The imperial powers extended a paternal interest in their ex-colonies as experts by past association, not for altruistic reasons but because of their own political interests, especially on international issues and systematically manipulated individuals, groups, associations and international organisations for their benefit, at the cost of newly-independent countries. Some examples are World Trade Organisation, Disarmament Committee and other international associations.

The lessons of history should not be forgotten. Globalisation, the current economic *mantra*, needs to be monitored closely lest trade dominated countries invade through multinational corporations.

## II

In this context, it would be pertinent to refer briefly to India's complaint to the United Nations on January 1, 1948, regarding Kashmir. On November 19, 1947, India had opposed the Pakistani premier's proposal for reference of the issue of disturbances in Kashmir to the United Nations. However, Pakistan insisted on U. N. intervention on November 24, 1947.



Later, the Indian Prime Minister, Jawaharlal Nehru, on December 22, 1947, issued a letter (as an ultimatum) demanding of Pakistan not to allow invaders to enter Kashmir through its territory. No reply was received despite two reminders. However, on December 31, 1947, Pakistan complained against Indian attacks and denied the facts of its own aggression.

India was left with no alternative but to complain against Pakistan to the United Nations<sup>8</sup> on January 1, 1948. Many people, suspicious of manoeuvres at the United Nations, were not happy with the Indian decision to approach the United Nations and instead wanted to proceed directly to defend the territory.

India, it may be recalled, joined the United Nations as an original member on April 25, 1945, at its birth in San Francisco, having full faith in its charter, its declaration of "the sovereign equality of its members" and its commitment against use of force or threat of force to ensure international peace and security.

India's record at the United Nations has been second to none and its credentials are of the highest order, with creative and constructive participation in various UN operations. By any yardstick, India's faith in the United Nations and its eligibility for permanent membership of the Security Council cannot be ignored in the light of changes in the world situation, the growth of membership of the United Nations and other more cogent reasons, not necessary to catalogue here; but strangely, objectivity has been found missing amongst the Security Council members over India's claims.

By and large, however, the results achieved through the United Nations have been commended and its peace efforts appreciated, even though some important powers appeared to be meddling.

The chapter of U. N. involvement in Jammu and Kashmir, beginning January 1, 1948, when India complained and the treatment it received, has turned out to be a lamentable story, resulting in the perversion of the Charter and its peace process by colonial powers for reasons other than merit, objectivity, justice, international morality, peace, security and the integrity of nations, as a fundamental obligation under the Charter and outside.



India's policy of Non-alignment, followed in the United Nations, was anathema to the Western powers. By not acting upon the firm complaint of border violation by Pakistan and demanding that the invader withdraw all forces from the occupied territories, the U.N. failed in its primary task under the Charter and unfortunately, it equated the complainant and the defendant, even though the breaches were confirmed by the U.N's own observers and representatives, and Pakistan's untrue and misconceived submissions were disproved by independent media.

The U.S.-U.K. axis dominated the U.N. Commission, the observer groups, and the Security Council, directly or indirectly, wrongly premised and pursued the goal of either partition of the State, or holding of a plebiscite in Muslim majority areas, with an alternative of an independent status for the Valley, possibly guaranteed by other powers because of strategic or ideological interests.

The United Nations erred in not following the complaint objectively. Despite Pakistan's subsequent admission of having breached the borders of the State by armed forces and others, yet to this day, the areas occupied illegally, and in violation of the letter and spirit of the Charter, remain in Pakistan's unlawful possession, and the U.N. has failed to have these vacated and returned to the rightful State.

The United Nations' agencies also wrongly sidetracked on examining the validity of Kashmir's legal and final accession despite their own legal adviser's opinion and that of the other members and tried to create a dispute, notwithstanding the terms of the accession laws, through irrelevant and extraneous arguments.

The ceasefire with Pakistan, based on the line of control, in occupation of extended areas of the State, was an unfair decision. Pakistan failed to abide by the resolution of August 13, 1948, and to vacate the territories occupied illegally. Consequently, the resolution became infructuous, by which act, India was officially absolved of all the obligations it was under.

Earlier, manoeuvring by some powers was exposed by Dr. Chyle, the UNCIP member, and the U.S.-U.K. bloc was criticised.



Then, the name of U.S. Admiral Nimitz was proposed as an arbitrator, but his posturing and bias and his backdoor imposition were foiled, even though approved by President Truman and Prime Minister Attlee. For valid reasons, India rejected his name and therefore, the game-plan failed.

Many variations of the suspect scheme for inducting foreign forces, and division of J&K territories, were offered from time to time, a la MacNaughton and Dixon<sup>9</sup>, but were not acceptable because they violated Indian sovereignty. Then came the U.S. with Dr Graham, who held three terms of appointment as a mediator but failed to make progress because of wrong preconceived notions.

In the meantime, Pakistan consolidated its position in the illegally-occupied territories, and the U.N., under a Western manoeuvre, turned a blind eye to the outrage. A side-show of undue U.S. interest was the visit of Ambassador Adlai Stevenson to Kashmir on May 1, 1953, where he held secret discussions for two full days with Sheikh Abdullah, the then Prime Minister of Jammu and Kashmir; the final meeting lasted seven hours, without aides. Both disclosed nothing.

The Manchester Guardian, however, revealed that the basis of discussion covered the independence of Kashmir from both India and Pakistan, perhaps, with a guarantee from the U.S. Then arrived John Foster Dulles, Secretary of State, and seemingly offered a fresh approach, but it was actually a backward step, with India to hold Jammu and Ladakh, POK (Pakistan Occupied Kashmir) for Pakistan and an independent status for the Kashmir Valley. Since partition of the State was not acceptable to India and Kashmir was not allowed to be an independent territory, with the Indian objections being stressed consistently, the U.S./U.K. intervention at the United Nations failed.

The Western powers decided to include Pakistan in military pacts against the communist threat, and during 1954-57, the diehard Islamic State joined Seato, Cento, Baghdad, and other combinations. Pakistan received heavy U.S. arms and military equipment, ostensibly to be used against the Communists, but actually misused against India. Non-aligned India refused to join any military pacts.



The United Nations Security Council discussed Kashmir on January, 1, 1957, and early 1958, and it was V.K. Krishna Menon<sup>10</sup>, who, in a lengthy and brilliantly analytical speech on January 22 and 23, 1957, tore to shreds the statements and arguments of his opponents; his intervention of November 11, 1947, was classic and adjudged great.

In December 1957, Bulganin and Khrushchev visited India and Kashmir and expressed support for India, which had a tantalising effect in the world fora. However, the continued machinations at the U.N., resulted in the reappointment of Dr Graham in December 1957, and he again tried to push through in 1958 his pet proposal of induction of foreign troops into Kashmir. This was wholly unacceptable to India and was rejected, and Dr Graham's mission failed.

In 1962, the U.N. Security Council discussed the Kashmir issue again, and once again Krishna Menon<sup>11</sup> scintillatingly knocked the bottom out of the adverse case for a plebiscite. However, on December 28, 1962, Pakistan through a border agreement, ceded an important part of Kashmir to China of about 2,000 sq. miles. India protested to both the countries about this illegal transfer. This was a sinister game played by Pakistan to gain the favour of Beijing, at the expense of Kashmir State and India. On September 1, 1965, Pakistan attacked Akhnoor in Jammu and Kashmir, and on September 5, the Rann of Kutch, and a war broke out between the two countries. However, a ceasefire was brokered by Kosygin and became effective between September 22 and 23, 1965. Tashkent played host to a meeting and an agreement was signed between India and Pakistan on January, 10, 1966.

Unfortunately, after the agreement was signed, Prime Minister Lal Bahadur Shastri died the following day in Tashkent, bringing forth gloom all around. The terms of the agreement/declaration are reproduced in Appendix - VI. Briefly, both countries resolved to maintain peace, good neighbourly relations, reduce tensions, not to interfere in internal affairs, take steps to stop adverse propaganda and exodus of population. The armies disengaged on June 30, and troops withdrew beginning August 23, 1966.



The Tashkent Declaration was generally welcomed and it was the first attempt to bypass the unsuccessful auspices of the United Nations, and its policies and plans, in relation to India and Pakistan.

The second and most important move came during the Bangladesh imbroglio, after Pakistan attacked nine Indian airfields on September 3, 1971, in the western sector, eventually resulting in its defeat. After the Pakistani surrender in Dhaka, the Simla Agreement was signed between the Prime Ministers of India and Pakistan on July 2, 1972, without outside mediation, making the role of the United Nations in Kashmir redundant, inconsequential and its past resolutions irrelevant. The terms of this agreement are reflected in appendix VIII.

India has abided by the terms and conditions of the two agreements and adopted bilateral negotiations with Pakistan as a sheet anchor of its policy. Though pledged to peaceful negotiations and actions, Pakistan, however, has systematically, more so since 1989, violated the letter and spirit of the agreements covertly and overtly, in the form of a proxy war and terrorism, forcing India to respond and defend its territory from depredations.

In the light of past manoeuvres at the U.N. and the interested involvement of other powers, India rejected the induction of third party mediation into its relations with Pakistan, not only in Kashmir but in other matters as well. Thereby, India, conscious of the political scheming and strategic aspirations of some powers in regard to Kashmir, has thwarted any such attempt and is hell-bent on not allowing any new colonisation to raise its ugly head and thrive in any part of Indian territory, through any means, including international manipulation or intrigue.

India's relationship with J & K State stands solidly on its commitment, constitutional, ethical and historical foundations, bound by the unanimous mandate of the Indian Parliament and the wholehearted support of the Indian people, declaring that J & K State is, and shall always remain an integral part of India. The sole superpower, self-designated world policemen, with or without the acquiescence or support of the five permanent members of the U.N.



Security Council (who are also exclusive nuclear powers), would not hesitate to exercise hegemony or manipulate U.N. decisions in their own interest, against India or other countries, even if the latter became nuclear haves. India will have to guard itself against such a peril.

The latest J & K Assembly elections held in 1997 in a free, fair and secret ballot, electing a new State Government with an absolute majority, and election of State representatives to the Indian Parliament, underscores the will of the people of J & K State and are a reaffirmation of what they want. They also realise that India would not under any garb succumb, in the future to any form of neo-colonialism—political, economic, scientific and technological.

The Kashmiris have suffered terribly from foreign subjugation and colonisation in the past and have undoubtedly drawn hard lessons from history.

The Kashmiri Muslims, in particular, should need no reminders of the tyranny of discrimination, humiliation, suspect loyalties, inferior status and distress endured by them during the Islamic rule of the Shahmiris, the Chaks, the Moghuls, the Persians and the Durrani Afghans not excluding Aurangzeb and Sultan Sikander, the bigots. As for the Sikh and Dogra rule, the less said the better.

Let us now proceed to explore and appreciate the relationship between India and J & K State since Independence, which guaranteed extraordinary rights, privileges and freedom to the people of the State, never known by them before in their long history, with the earnest hope and faith that India would not suffer from subjugation or neo-colonism in any form in its polity and economy, in the future.



Notes

1. *Encyclopedia Britannica* - Vol 6. Pages 41-42. 14th Edition (Contribution by Dame Lallia Penson)
2. *The Story of Civilisation* - Well Durrant, Vol - I, Chap XXII, Pages 613-614.
3. *The Delhi Sultanate*, Ed. R.C. Mazumdar Vol VI, Pages 417-419.
4. *Ibid* - Pages 421.
5. *The Story of Civilisation* - Will Durrant Vol - I, Page 614.
6. *History of Kashmir* - P.N.K. Bamzai (Political and Cultural), Vol - 3.
7. *Facts are Facts* by Khan Wali Khan (Allied).
8. *Essential Documents and notes on Kashmir Dispute* by P.C. Lakhanpal. International Publisher, 1953.
9. Canadian General McNaughlon, U.N. Security Council President (1949) and Justice Owen Dixon of Australia (May 1950) acted as U.N. mediators. The latter adjudged Pakistan having illegally violated the international border of J&K State.
10. U.N. Speeches by V.K. Krishnan Menon, Government of India publication.
11. *Krishna Menon on Kashmir* by Reddy & Damodaran. Sanchar - 1992.



## Chapter 5

### *The Story of Accession*

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*Kashmir has always been in history for thousands of years — not always but essentially — a part of India and for hundreds of years, it was politically a part of India long before the British came. Culturally, of course, it has been one of the biggest seats of Indian culture and learning, throughout history, for about 2,000 years.*

*—Jawaharlal Nehru.*

So in 1947, when the British Government announced its plan to leave India, after creating two dominions and allowing the native rulers to accede to either of these, the Kashmiri Pandits, descendents of the earliest human settlers in Kashmir, looked forward to the reunification of the State with India.

Unfortunately, however, the accession did not come through expeditiously, without hesitation, complications and conflict. It would, therefore, be appropriate to examine the story in detail, to arrive at an objective conclusion. In addition, historical and political developments in Kashmir have got embedded in an ocean of intrigue, ignorance and disinformation, and even well-meaning persons have sometimes unwillingly accepted positions unrelated to truth.

Often demagogues and jingoes with biases have led the chorus to mislead; hence our circumspection. However, it is important to remember Nehru's objectives on Kashmir: **To ensure the freedom and progress of the people and to prevent anything happening that might endanger the security of India.** The latter perception was based on the geographical position of the State's international frontiers.



At the Round Table Conferences (1930-32), Britain proposed a federation of the British Indian Provinces and the Princely States. A majority of princes "expressed their willingness to join... The accession of each State to the federation was to be the voluntary act of its ruler."

The Government of India Act, 1935, recognised the agreed principles of accession by the States. But no federation came into being and the princes were not called upon to decide. British manoeuvrings, during the next ten years, accentuated the differences between the Indian National Congress and the Muslim League, leading to the partition of India and creation of Pakistan.

The India Independence Act, 1947, passed by the British Parliament, reflected the transfer of power arrangements to two successor dominions and laid down the necessary follow-up procedures. The law on the accession of either of the emerging dominions, India and Pakistan, was included in Section 8 (2) read with Section 9(b)C, which inter alia said: "An Indian State shall be deemed to have acceded to the dominion, if the Governor-General has signified his acceptance of an instrument of accession, executed by the ruler thereof."

Most of the rulers signed an identical instrument while acceding to India or Pakistan, and its acceptance by the concerned Governor-General, sealed the choice of the ruler. Except Jammu and Kashmir, Hyderabad and Junagadh, all the States acceding to India, did so before August 15, 1947.\*

The ruler of Jammu & Kashmir could not make up his mind on the options available to him. Personally, he favoured an independent Kashmir with sovereign powers vested in him. But without the cooperation and support of India and Pakistan, this path could not be smooth. He, it seems, despite persuasion from some Hindus and Muslims, did not wish to accede to India and merge his State into a democratic secular dominion.

Though he had received assurances from Jinnah and the Muslim Conference on his safety, autonomy and sovereignty, in

\*Note: Junagadh first acceded to Pakistan, and Hyderabad declared itself independent, but both joined India later.



case he acceded to Pakistan, he was unsure about their true intentions. Also, there were no guarantees to fall back upon. In this dilemma, he was indecisive and allowed precious time to run out. Probably, he felt that by gaining time, the problem might get solved by itself.

Nehru's warning to the ruler through Sardar Patel, to expedite accession, proved prophetic, and the Maharaja's policy invited the complications apprehended, to the detriment of Kashmir and India.

There is another significant aspect of pre-accession developments, which calls for attention here. With August 15, 1947, fixed as the date for transfer of power to the two dominions, Lord Mountbatten set up two boundary commissions in June 1947. One for the Punjab and the other for Bengal under the chairmanship of Sir Cyril Radcliffe — a renowned British jurist. The Punjab Commission was to "demarcate the boundaries of two parts of the Punjab, on the basis of ascertaining the contiguous majority areas of Muslims and non-Muslims." The Radcliffe award announced on August 15, 1947 and with immediate effect, included the division of the Muslim majority district of Gurdaspur into two parts and allotted three *tehsils* in the east to Indian Punjab. This area provided a vital access to J & K State through Pathankot and offered a highway link to Jammu. It is said that Jawaharlal Nehru actively prodded Mountbatten and others in the Viceroy's Estate (where Radcliffe was staying) and manipulated the above award in favour of India, thus assuring an invaluable passage to and transportation link with Jammu & Kashmir, without which the defence of the State would have been much more difficult. The civil, military and political importance of this acquisition should have dawned on the Kashmir ruler and goaded him to expedite his decision to accede to India. Pakistan and its sympathisers have always rued this award.

The Maharaja of Jammu & Kashmir prevaricated and preferred to offer a standstill agreement to Pakistan on August 12, 1947, relating to maintenance and facilitation of communications, supplies, post and telegraph services through the respective territories. Pakistan confirmed the agreement on August 15, 1947.



A similar agreement was also offered by the ruler to India but negotiations could not take place and it was not concluded, though the services were not suspended.

The ruler's authority to sign such agreements, or to accede to a dominion of choice was strictly in accordance with law. It concurred with the declared policy of the ruling party of Pakistan and the official view of Jinnah, the architect of Pakistan.

The All India Muslim League Working Committee Resolution of April 2, 1942 had pronounced: "With regard to the Indian States, it is the considered opinion of the Committee, that it is a matter for them to decide, whether to join, or not to join, or form a Union."

Jinnah's statement of July 31, 1947, on the eve of Pakistan's formation, reiterated that "the legal position is that with the lapse of paramountcy on the transfer of power by the British, all States would automatically regain their full sovereignty and independent status. They are, therefore, free to join either of the two dominions or to remain independent. The Muslim League recognises the right of each State to choose its destiny. It has no intention of coercing any State into adopting any course of action." Jinnah supported vigorously the sovereign right of the princes to accede or not.

The policy and approach of the Indian National Congress was not to recognise any treaties between the rulers and Britain on lapse of paramountcy and, therefore, the Rulers could not claim an independent status. Pakistan wanted the Ruler's right to accede, in Hyderabad and Junagadh, to be enforced and in contradiction, it insisted on plebiscite in Kashmir, even though the ruler had actually acceded to India.

Contrary to the policies announced and assurances given by its leaders, Pakistan<sup>1</sup> played a diabolical role after India's independence and, despite a standstill agreement with Jammu Kashmir, it started coercing the State by an economic blockade and did not allow the agreed services and supplies to pass through its territory, thereby creating serious shortages in essential commodities and disrupting communication links, resulting in undue hardship to the people of Kashmir.



Not only did Pakistan break the agreement, it unleashed an invasion in the garb of a tribal insurrection, directed and actively supported with arms and other war material supplied by them and through their territory.

The invasion was sudden and swift and took the small State forces by surprise. The invaders almost reached the capital city, Srinagar, ravaging the territory in their onward march, with pillage, rape and murder.

Realising the fiendish nature of Pakistani actions, the unreliability of their word and the cunning political game they had embarked upon, the Maharaja requested the Government of India to rush its armed forces to defend Kashmir and to save it from being overrun by the Pakistani marauders. Since there was no constitutional agreement between India and Jammu & Kashmir, the Indian army could not be deployed or used in the State.

The Maharaja<sup>2</sup> then decided to accede to India and on October 26, 1947, sent the standard instrument of accession to Lord Mountbatten, the Governor-General of India, who conveyed his formal acceptance of the accession of Jammu & Kashmir to India on October 27, 1947.

The Indian Government received urgent messages not only from the ruler but from the people's representative, Sheikh Abdullah, and both pressed India to accept the accession. In fact, India did not want a mere accession from the top but also with the sovereign will of the people in Kashmir.

The covering letter from Mountbatten also unilaterally and independently conveyed the wish that "after the restoration of law and order, and clearing of the soil of the invaders, the State's accession would be settled by reference to the people." The Indian forces were then airlifted to Kashmir in a massive operation, the advance of the invaders was checked and Kashmir was saved.

The important terms and conditions of accession are reflected in the standard instrument excerpted below and the complete details are included in appendix-I.

"I hereby declare that I accede to the dominion of India, with the intent that the Governor-General of India, the dominion



legislature, the Federal Court of any other dominion authority established for the dominion shall, by virtue of this my instrument of accession, but subject always to the terms thereof, and for the purposes only of the dominion, exercise in relation to the State of Jammu & Kashmir (hereinafter referred to as 'this State'), such function, as may be vested in them by or under the Government of India Act, 1935, as in force in the dominion of India on the 15th day of August, 1947, (which Act as so in force, in hereinafter referred to as 'the Act').

I, hereby, assume the obligation of ensuring that due effect is given to the provisions of the Act within this State, so far as they are applicable therein by virtue of this, my instrument of accession.

I accept the matters specified in the Schedule hereto as the matters with respect to which the dominion legislature may make laws for this State."

Schedules:

- A. Defence
- B. External Affairs
- C. Communication (As detailed in Appendix I)
- D. Ancillary

The Maharaja had, in the meantime, left Srinagar for the safety of Jammu, and the administration was paralysed. The National Conference leaders and Sheikh Abdullah, released earlier from prison, mobilised the masses, created a people's militia of unarmed Muslims, Hindus and Sikhs, who took charge of the situation, maintained law and order and prevented chaos.

The struggle was between the people of Kashmir and the invaders; they united and rose as one, irrespective of religion or creed, to stem the tide of invasion and to defend the unity and integrity of the State. The administration was revived and the Maharaja appointed the Sheikh as Head of Emergency Administration on October 31, 1947, and five months later, Prime Minister.

The Sheikh's government, supported by the state political parties and the people, welcomed and endorsed the act of the Maharaja to accede to India.



Fighting continued at the border. To avoid further bloodshed, the All Jammu and Kashmir National Conference, the premier political party of the State, deputed a senior leader G.M. Sadiq to Pakistan, to have the democratic right of the people of Jammu & Kashmir recognised by them, so that the Pakistanis would agree to abide by the sovereign will of the Kashmiri people on the question of free association with India or Pakistan. Pakistan did not agree to the proposal and insisted on accession to Pakistan. Sadiq returned on December 10, 1947, a disappointed man.

Indian and Pakistani forces were face to face and Pakistan still did not withdraw from the occupied State territory. In an exchange of telegrams, Pakistan proposed on November 19, 1947, to refer the issue to the United Nations. But Nehru disfavoured it, despite a reminder on November 24, 1947.

Instead India, on December 22, 1947, delivered a warning letter to the Pakistan premier to cease all military operations, desist from siding with the irregulars and withdraw from J & K. State. The warning was ignored, despite two reminders.

India referred the issue to the United Nations on January 1, 1948, as a complainant against Pakistan, under Article 35 (Chapter VI) of the United Nations Charter, demanding the withdrawal of Pakistani forces and irregulars and stoppage of all military assistance and action by them.

Article 35 of the U.N. Charter says: "Any member may bring any dispute, or any situation of the nature referred to in Article 34 to attention." Article 34 reads: "The Security Council may investigate any dispute, or any situation, which might lead to international friction etc..."

Though the action of Pakistan in Kashmir was a clear case of aggression against India, the latter preferred not to complain under Chapter VII of the United Nations Charter, it instead invoked Chapter VI (Article 35) to complain of the situation created by Pakistan's armed intervention.

The Indian reference to the United Nations inter alia said: "Under Article 35 of the Charter of the United Nations, any member may bring any situation." India, it will thus be seen,



brought to the United Nations' attention, a situation for redressal and not a dispute on Jammu & Kashmir State.

The Security Council opened the debate on January 7, 1948. Pakistan also filed a counter complaint to the United Nations against India on January 15, 1948, on various grounds including:

- i. India did not really accept the scheme of Independence
- ii. India wished to destroy Pakistan
- iii. India was sabotaging Partition and withholding its share of funds and killing Muslims, and
- iv. India occupied Junagardh and arranged a fraudulent accession of Jammu & Kashmir State

These issues were truly not material and did not answer Indian charges against Pakistan, whose territory was being used against India.

Pakistan also blatantly denied having aided the tribals, or having invaded the State and stated: "The situation in their (India's) view is due to the aid of Jammu & Kashmir State, and they emphatically denied any aid, or assistance to the invaders and promised "to continue to do all in their power to discourage the tribal movement by all means."

These denials were received with surprise, if not derision, by the international media and diplomats. However, it was the United Nations Commission that rejected these denials and later recorded that Pakistani forces had, in fact, entered the State, and that armed intervention had undoubtedly taken place, resulting in a changed situation in Kashmir, which meant, in other words, that Pakistani arms and nationals had invaded, aided and abetted the raiders.

To stop the fighting, the Security Council passed a Resolution on January 17, 1948, calling upon the two sides to ceasefire and refrain from aggravating the situation. The resolution stated: "Having heard statements on the situation in Kashmir, from the representatives of the Governments of India and Pakistan..." and have concluded that the basis of the complaint was affirmed and that the situation was the result of action by the armed forces and Government of Pakistan.

Pakistan raised many legalistic, ancillary and irrelevant issues to confuse the basic matter of their involvement in Kashmir's invasion, including one of its accession to India.



But the validity of Kashmir's accession, while explaining the constitutional provisions as enacted by Britain and as interpreted also by Pakistan, there could be no doubt about the ruler's competence to accede to India; the validity and finality of Jammu & Kashmir State's *de facto* and *de jure* accession, and to its irrevocable status. It was binding on Jammu & Kashmir State, as well as on India. Nor could the competence of the Maharaja to exercise the right and authority be questioned or faulted.

The India Independence Act 1947, passed by the British Parliament, did not envisage conditional, partial, or provisional accession and unambiguously vested the princely rulers with full powers to accede.

The subject matter, the process of its submission and acceptance of the Instrument of Accession of Jammu & Kashmir was totally in line with all the other instruments of accession signed by other rulers of the States, who had opted for India, a U.N. document stated. Most members of the United Nations generally agreed with the Indian position.

As an example, Senator Warren Austin, the United State's representative, speaking at the United Nations Security Council meeting on February 4, 1948, acknowledged the legality of the State's accession to India. "The external sovereignty of Jammu & Kashmir is no longer under the control of the Maharaja, with the accession of Jammu & Kashmir to India, this foreign sovereignty went over to India and is exercised by India and that is how India happens to be here as a petitioner."

The Legal Advisor to the United Nations Commission on Kashmir came to the conclusion that "the State's Accession to India was legal and could not be questioned." Further, the United Nations resolutions of August 12, 1948, and January 5, 1949, recognised this position.

The United Nations was aware of India's announcement to seek the will of the people of Jammu & Kashmir to settle the matter of accession, after the State had been cleared of all invading forces, law and order had been fully restored and the situation normalised. It also noted Pakistan's support for a plebiscite in Kashmir. It is, in



this light, that the Resolution of August 13, 1948, must be read, while quoting the relevant extracts:

Part I of the Resolution provided for ceasefire and further stipulated in para B, that both India and Pakistan agreed to "refrain from taking any measures that might augment the military potential of the forces under their control in the State of Jammu & Kashmir."

Pakistan violated the agreement by increasing the strength of their armed forces in many ways, as noted by the United Nations Commission on Kashmir (UNCIP), by constructing army headquarters in towns of "Azad Kashmir", by constructing roads and other infrastructure and inducting more troops and resources into the Jammu & Kashmir territory.

Part III: "The Governments of India and Pakistan reaffirm their wish that the future status of Jammu & Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the truce agreement (Part II), both governments agree to enter into consultations with the United Nations Commission, to determine fair and equitable conditions, whereby such free expression could be assured."

Further to the above resolution (Part II) and consistent with the constitutional status of India, in relation to Jammu & Kashmir State, the United Nations Resolution of January 5, 1949, referred to the holding of a plebiscite in Kashmir reiterating the conditions detailed and confirmed in their letter of August 28, 1948, in which, it interalia agreed, as follows:

- i. It provides for the total withdrawal of Pakistani forces and tribesmen from Kashmir and disbanding and disarming of the Pakistan Occupied Kashmir forces, which area was not to be consolidated.
- ii. A plebiscite administrator would then be appointed by India.
- iii. The sovereignty of the Jammu & Kashmir State would extend to all areas of the State, including the Pakistan occupied and controlled territories, which would have to be evacuated by Pakistan.
- iv. Pakistan would play no part in the organising of the plebiscite, or its conduct, or in the matter of the administration of any part of the State.



- v. A plebiscite would not be binding on India, if Pakistan failed to evacuate occupied territories of all their forces, tribesmen and their nationals, and
- vi. In the event of Pakistan not evacuating the occupied territories of Kashmir, the Resolution would not be binding on India. (Underlines added).

It is noteworthy, that Pakistan not only continued its unlawful occupation of Kashmir territory, but reneged on its agreement not to enhance its military position in the territory and made the Resolution inoperative.

With the manoeuvrings of the SEATO AND CENTO treaty membership, coupled with an anti-neutrality stance against India, and as champion of Anglo-American policies and interests in the subcontinent, Pakistan evaded the evacuation of the occupied territories of Jammu & Kashmir by its armed forces, irregulars and other nationals. No plebiscite could, therefore, be held. The Kashmiris were thus deprived of the opportunity to express their free will, in a plebiscite.

Pakistan remained in wrongful possession of nearly 30,000 square miles of occupied territory out of more than 88,000 square miles of the total area of the State.

The entire State of Jammu & Kashmir had acceded to India on October 26, 1947. The areas occupied by Pakistan and those incorporated in their Northern Territory are illegally occupied and not part of Pakistan, nor constitutionally a territory or protectorate of that country, nor do they have a constitutional status of any kind, as part of the federal structure, with any defined rights and political privileges. Even the State-subject laws do not apply in the case of lands, employment, or human rights, to these areas.

The United Nations Resolution became infructuous and it could not be revived Pakistan politicians, diplomats and supporters repeat *adindefinitum*, misleading references to and interpretation of the U.N. resolution on Kashmir and brazenly suppress the fact that Pakistan's own acts of commission and omission rendered the relevant U.N. plebiscite resolution invalid, infructuous and not binding on India, as confirmed by the U.N. itself. For Pakistan to



talk glibly on U.N. recommendations on plebiscite, and the right of self-determination for Kashmiris, is nothing but a falsification of the truth. It is obvious further, that one could not, in fairness and at law, take advantage of one's own failure. Yet misleading statements in this regard are repeated from time to time. Contrary to Pakistani politicians and government views, Bhuttos B Ghali, United Nations Secretary General,<sup>3</sup> had stated that the old United Nations Resolution on Kashmir could not be enforced. No further progress was made at the United Nations and Kashmir remained a 'dead' issue for many years there.

Occupied areas like Gilgit and Chitral were meanwhile incorporated illegally into Pakistan without ascertaining the choice of the people. With their record at the United Nations, on the facts of the invasion and their failure in regard to the holding of a free and fair plebiscite in Kashmir State, it did not suit Pakistan to seek a plebiscite any longer.

Comparatively, the unilateral announcement made in October 1947, and subsequent steps taken by India to secure the will and assent of the people, based on law and facts, was just and equitable, and in accordance with the highest principles of democracy.

In view of the situation created by Pakistan, lack of progress at the United Nations and on public demand, the Ruler of Jammu and Kashmir<sup>4</sup> directed on May 1, 1951, that a Constituent Assembly be set up for the framing of a Constitution, and settling other issues, under the terms of the Jammu Kashmir Constitution Act of 1939, which was "convoked on the basis of free election by all citizens of the State over 21 years of age by means of direct and secret ballot", and met on 31 October 1951.

The Constituent Assembly, after lengthy and deep deliberations, unanimously adopted the new Jammu & Kashmir Constitution on November 17, 1954, and reaffirmed the accession of the State, in accordance with the wish expressed in the letter of October 27, 1947, of Lord Mountbatten.

Since 1957, the democratic process in Jammu & Kashmir has been strengthened by five-yearly elections to the State Assembly, leaving the Pakistan occupied areas unrepresented, till their



vacation by Pakistan. The State has also regularly taken part in parliamentary elections alongwith the rest of India.

In view of India's right to the pre-1947 territory of the State, the line of control marks the Pakistan occupied areas which have to be restored to Indian sovereignty, as mandated unanimously by the Indian Parliament on February 22, 1994. India has asserted, from time to time, that only the restoration of POK territory now remained to be accomplished.

The least that Pakistan could have done was to recognise the actual line of control as its international border, for a durable peace, as promised by Prime Minister Z.A. Bhutto at Simla. Pakistan has no claim, right or title to Kashmir, but merely a fundamentalist objective.

Pakistan sometimes asserts that it is not complete without Kashmir, but conveniently forgets that its promoters, neither before, nor at the time of Independence, claimed Kashmir as part of a consolidated Muslim State and, during the freedom struggle, did not seek its incorporation into Pakistan, as borne out by the following:

i. Sir Mohd. Iqbal, in his presidential address at the All India Muslim League session at Allahabad on December 30, 1931, said: "I would like to see the Punjab, North Western Frontier Province, Sindh and Baluchistan, amalgamated into a single State." It is this statement, which gives him credit, as the father of the idea of Pakistan, and he did not mention Kashmir as a desired part.

ii. The All India Muslim League Resolution of March 22 and 24, 1940, resolved that "Muslim contiguous areas of India be constituted as an independent State." There was no reference to Kashmir, either in the discussions, or the formulations."

iii. Mr Jinnah's demand for a separate homeland for Muslims, made at Lahore on March 22, 1940, specified Bengal, Punjab, North Western Frontier Province, Sindh and Baluchistan, but never included Kashmir as part of a future Muslim homeland in India.<sup>5</sup>

iv. The All India Muslim League Resolution of April 2, 1942, conceded the right of the rulers of States to accede to either



dominion, without any exception. The right was also affirmed by Jinnah and assured the rulers of his support.

- v. The Congress and the Muslim League were at loggerheads on the future of the States. The Congress policy was that the people of every State should decide their own destiny and not the ruler. The Muslim League insisted that this right is and be exclusively vested in a ruler, whose subjects would follow him to whichever side he chose.

"In this manoeuvre, the Muslim League presented Kashmir to India on a golden platter, complained Khan Wali Khan in his book, *Facts are facts*.

These and other declarations by Pakistan's leadership confirm, that Kashmir was not conceived, desired or claimed as an integral part of a consolidated Muslim State or homeland until 1947. Pakistan's subsequent grouse that it is not complete without Kashmir is both misconceived and unwarranted.

Pakistan, or some secessionist elements, suggest as an alternative means of resolving the matter, that the Kashmiris should have and be permitted to exercise a right of self-determination, to choose their future association and set-up. Apart from the fact, that constitutionally and legally, the State of Jammu & Kashmir had acceded to India in 1947, and was an integral part of the Indian Union, the people of the State had already had many opportunities to express their free will and as such, a new right of self-determination, could not and did not arise.

Furthermore, the right for a part of a country to secede is not available under the Indian or other Constitutions. The accession to India under the Indian Independence Act 1947 cannot also be nullified.

It is well known that the right of self-determination could legitimately be claimed only by countries, who by vicissitudes of history, or as a result of war, are held under an alien power. This is obviously not the case with Jammu & Kashmir State. It is universally recognised that this right cannot be allowed to parts of a State, constitutionally established and legally constituted.

Otherwise, most of the existing States in Europe, Middle East and Asia could be broken up and any demand for self-determination



by a part, would cause disruption and upheavals within States of plural societies in Asia, Africa, Latin America and in the West, and are hence, unacceptable.

Prof. Maurice Mendelsohn<sup>6</sup>, a well known British expert on constitutional law, has said: "The Kashmiris do not have the right to self-determination or secession." He disagreed that the people of the State acquired a right to self-determination at the time of the Partition of India in 1947, and that the right still exists, because it has neither been exercised nor abandoned. He adds that even the 'wish' of Lord Mountbatten to settle the question by reference to the people was not valid, as he had no legal authority to impose such conditions.

In ratifying the International Covenant on Civil and Political Rights and Economic, Social and Cultural Rights, India had by declaration reserved that the right of self-determination appearing in Article I, applied only to people under foreign domination and these words do not apply to sovereign independent States, or to a section of people or nations, which is the essence of national integrity.

India repudiated any reference that the Covenant grants the right to any people within India to secede. Such a right would exist only if the right of secession had become recognised as a principle of international law, independent of obligations under the Covenant. Therefore, no right of self-determination devolved on the people of Jammu & Kashmir. As to secession, the Indian Constituent Assembly did not envisage ceding and separation of Indian territory and no provisions were provided in the Constitution.

In this connection, it would be relevant to note that the Jammu & Kashmir Constitution, in Section 3, states: "The State of Jammu & Kashmir, is and shall be an integral part of the Union of India." This provision, under Section 147, is not subject to repeal, amendment, or any change whatsoever.

If the principle of self-determination were to be applicable to Kashmir, a part of India, apart from international law, there would be no justification for refusing similar rights to Wales, Scotland and



Ireland by Britain, Brittany by France, Quebec by Canada and to the Flemish people by Belgium, and so on.

Neither Turkey nor Iran nor Iraq have conceded the right of self-determination to the large number of Kurds living in these countries, on the grounds that the areas occupied by these people are parts of sovereign territories, which cannot secede.

Even the possibility of some degree of autonomy to the Kurdish areas has not materialised for these unfortunate people. If religion were to be a criterion for self-determination, the Catholics could claim a separate State from the Protestants, for example, in Ireland; the Buddhist from non-Buddhists in Asia; the Muslims and the Christians in Africa and in multi-religious States like the Philippines.

Self-determination promoted by Lenin (Right of self-determination to nations) meant "political separation of those nations from alien national bodies and the formation of independent national States." Mark the words, 'nations', 'alien', which have no reference to parts of a State.

On an ethnic basis, Pakistan should also be willing to concede self-determination to the Pakhtoons, Baluchis and Sindhis, many of whom clamour for the right. One might even ask if the Pakistanis had permitted the Princely States acceding to them, exercise their choice?

It is a historical fact, worth recounting, that the Bahawalpur State was forced to accede to Pakistan against its wishes. The Khan of Kalat revolted against his forced accession and was arrested and detained in 1958. The ruler of Gilgit and Chitral never acceded to Pakistan, nor did the people have or exercise their free choice, but found the States incorporated into Pakistan, without democratic and human rights.

Similarly, the people of Gwadar, an area purchased from the Sultan of Muscat, were never permitted to declare their free will, before being merged with Pakistan. The Shias and the Qadianis in Pakistan could not demand the right and freedom to live in a State of their own. The latter have since lost their status as Muslims and complain of severe discrimination and persecution.



The pitiable condition and trauma of the Bihari migrant in erstwhile East Pakistan and that of the other Mohajir refugees in Sindh makes one cry for these people. They deserve better treatment, if not self-determination.

As regards POK areas, there has been no legal accession in favour of Pakistan. Hence incorporation, merger, or occupation of these territories is not according to law and, therefore, not valid. POK is merely an illegally held colony without any autonomy, fundamental rights, or valid constitutional linkage with Pakistan.

Mumtaz Rathore, the last appointed Prime Minister of POK had proclaimed: "Kashmiris will no longer bear the humiliations they had suffered for four decades." The people deserve self-rule if not self-determination, most justifiably. But, where is the legal or constitutional sanction for POK areas of Kashmir, gifted by the Pakistani Government to China? What about the people's rights in these 2,000 square miles of J & K State territory?

It is internationally acknowledged that the right of self-determination is neither absolute nor unqualified and it cannot be exercised by the destruction of other sovereign rights, including those of a nation's integrity and unity. It also does not envisage a movement, or condition imposed from outside and promoted or sustained by outside powers and forces. The proponents and supporters of such rights for the people of Kashmir must understand the natural limitations on such rights.

An objective examination, in the light of the above basic principles, would convince them of the invalidity, unreasonableness and unacceptability of their demand. A cycle of unrealistic expectations has led inevitably to disappointment to and for the Pakistan Government and political parties and frustration and anger of the people in POK, some of whom are undoubtedly Kashmiris. They must bemuse themselves of the pervading influence of the *mantra* or chant of either a plebiscite or self-determination, as the means of their objective of a single religion, or a vassal State in Kashmir.

It is best for Kashmiris to settle down, once and for all, to a forward-looking life of peace, amity and progress, of equality and



dignity and of freedom and prosperity, along with nearly 900 million Indians, including over 120 million Muslims.

If the agitator's demand on Kashmir be interpreted as seeking greater autonomy for the State, it is understandable. But the Jammu & Kashmir State, in fact, enjoys the highest degree of autonomy within the Indian Union; it has a separate Constitution to preserve and protect its special interests, has a separate flag, and is fortified with complementary provisions in the Indian Constitution and certain regulations, not applicable to the State.

Similarly, the laws of India under the State subject list do not get imposed on the Jammu & Kashmir State automatically and without concurrence. It is to be realised that autonomy does not mean absolute freedom of action and behaviour, overriding the law and the Constitution. It is an inseparable part of democracy and dictatorships do not recognise it as a right. It is understood to include a large degree of self-government, while protecting individual rights and freedoms and following a code of good governance in the interest of all citizens, irrespective of religion, creed, or economic criteria.

Any State that directly or indirectly subjects its people to various forms of terror and outrage and forces a quarter million of its own people, namely, Kashmiri Pandits, to take refuge for their safety, cannot with a shred of justification, seek more autonomy. In fact, the leaders of Jammu and Ladakh regions of the State are under great political pressure from their own people to seek and struggle for autonomy and freedom from the oppression of the Kashmir region.

There is no doubt that Kashmir enjoys a measure of internal self-government under the quirk of its constitutional mechanisms, unknown to the other regions or States of India. At the same time, Kashmiris are gratified at reaping the fullest benefits of being free citizens of a progressive, democratic and industrially advanced country in South Asia.

Kashmir has one of the highest standards of living amongst Indian States and yet it is unable to meet the pay-roll of its own employees from its revenues. Many people in India feel grudgingly that Kashmir is a drag on Indian resources, without any returns.



Jammu & Kashmir State has received the highest per capita financial assistance amongst all States from the Government of India, who have injected more than an estimated Rs 75,000 crore since 1947 into its economy.

Comparatively, no federating unit of Pakistan has even a semblance of autonomy and nothing to match the status and benefits of Jammu & Kashmir State. The POK areas operate as a subject territory, or a colony, and are denied any constitutional protection or autonomy and neither the Pakistan Government nor the POK administration have anything to show to satisfy perceptive persons in this regard.

However, any internal problems that may exist or arise in India, in the future, could and should be solved by mutual discussion and not by calls of insurrection, from within and without. Constitutional and legal mechanisms are available in the State to express and redress grievances amicably. It needs to be remembered that no government can tolerate terrorism, whether indigenous, or prompted from outside, and no State can abjure its responsibility to protect the integrity, sovereignty and unity of a country, and to ensure a rule of law.

It would be appropriate, at this stage, to refer to an international commitment by India and Pakistan, in the interest of future peace and friendship in the subcontinent, under the<sup>7</sup> Simla Agreement of 1972, wherein, the two governments solemnly agreed to hold "talks for the establishment of durable peace and a final settlement of Jammu & Kashmir". They also unequivocally committed themselves "to respecting each other's national unity and territorial integrity and to refrain from use of force or threat of force, to respecting the line of control in Kashmir and to prevent hostile propaganda against each other."

This agreement, which is tantamount to a bilateral treaty between the two countries, appropriately dismantled and substituted the role of the United Nations and other nations in Jammu and Kashmir, and thus, precluded foreign interference, mediation, or arbitration. The ceasefire line agreed to under United Nations auspices in 1949, by India and Pakistan, was redrawn with



minor changes and accepted by both as the *line of control*, which also made the United Nations observers redundant.

The fact that Z.A. Bhutto had assured India solemnly that the line of actual control would be sacred and accepted as an inviolable frontier, as a final settlement of the Kashmiri problem, is well known. Bhutto was aware of the adverse balance of tally in the past armed conflicts between the two countries and desired an enduring peace, without humiliation. But he soon fell from power and later lost his life, without fulfilling his commitment.

India stood by its commitment and released over 93,000 prisoners of Pakistan and vacated Pakistani areas occupied during the war. The Simla Agreement continues to be in force and is the agreed basis of the settlement, amicably, of all problems between the two countries, despite stresses and strains.

The understanding reached at Simla on 2nd July 1972, is in fact a "peace treaty", entered into and between two sovereign nations, duly signed by their heads of government, as one of an obligatory character and a declaration of renunciation of war, with a commitment for peaceful conduct, for the future. It was appropriately ratified by the parliaments of the two countries, approving the mutual exchange of prisoners and territories taken in war. The treaty includes no unilateral reservations or clauses for denunciation, while solemnly pledging the pacific settlement of any dispute between the two countries in future, and they stood committed by its terms.

This agreement was appreciated by most countries as a culmination of the U.N. ceasefire of 1948, and the Tashkent Declaration of January 10, 1966. Third parties were made aware of the object, implications and obligations of this bilateral agreement and to realise that any role or involvement or attempt at mediation, is against the spirit and terms of this treaty and would be uncalled for and unacceptable.

Most countries, including the U.S.A., the U.K., and Russia, have announced their full support for the framework and auspices of the Simla Agreement to settle differences and have opposed the conducting of a plebiscite in Kashmir.



From the point of view of self-determination and plebiscite, it may be useful to note the affirmation of the United States. The testimony Congressional hearing (March 6, 1991) by U.S. Assistant Secretary of State, John Kutty, categorically states: "The administration does not support plebiscite for Kashmir." The United States position has been that India and Pakistan should resolve their differences over Kashmir, bilaterally and peacefully, in the spirit of the Simla Agreement of 1972.

The United States stand was reiterated by the State Department on March 27, 1991. The Bush Administration reaffirmed its policy that the Simla Agreement should be the basis of a solution to the problem and rejected the idea of a plebiscite in Kashmir. The Under Secretary of State, Robert Kimsmith, said in April 1991, that the Simla Agreement provided the best basis to resolve the Kashmir issue.

The Clinton Administration, while suggesting that a dispute exists between India and Pakistan on Kashmir, considers that the Simla Agreement provides a good means to settle the matter amicably.

As regards the role of the United Nations, the then Secretary General, Dr Boutros Ghali, on September 19, 1994, expressed himself against "a peculiar tendency on the part of some people including, Benazir Bhutto, who wrongly interpreted the United Nations role and its resolutions."

It had been suggested that "the United Nations resolutions on Kashmir, despite the lapse of time, remained valid." Dr Ghali pointed out that the resolutions are just recommendations. "This means that resolutions of the General Assembly are not binding on the two parties. Pakistan had not rejected it (Simla Agreement) while insisting on an early solution."

The new Secretary General of the United Nations, Kofi Anan has also expressed himself similarly. While Pakistan technically and ritually expresses its adherence to the Agreement (and wrongly to the defunct United Nations Resolutions on Kashmir) and promises to stand by the Agreement, it tries systematically to subvert and disregard its terms and internationalise the issue.



Pakistan's repeated attempts to infringe the Line of Control in Kashmir, the training and arming of terrorists against India, the provision of war material, the availability of sanctuaries for terrorists, with or without fire-cover, arranging of operational bases across the border, and, in effect, fighting a proxy war coupled with anti-India tirades, through official and unofficial media, are examples of their perfidy, of which there is abundant and conclusive proof.

The statements of Robert Oakley, former United States Ambassador to Pakistan, former Congressman Stephen Solarz and others, are a friendly warning to Pakistan. India will be left with no choice but to fight against exported terrorism into Kashmir.

In view of repeated betrayal by Pakistan in regard to the invasion of Kashmir, the evasion of the United Nations' resolutions, the propagation of false hopes of a plebiscite or self-determination and non-application of these principles, the violation of the latter and the spirit of the Simla Agreement despite repeated assurances of friendly ties, and the conduct of a proxy war with its ground realities in Kashmir and other States supported by media blitzes, the Government of India, will be left with no alternative but to take multi-pronged steps to ensure that all internal and external threats are eradicated from Kashmir and elsewhere in India — that the laws which prevail in other parts of India, are enforced effectively in this State as well, that is, laws for law and order, free expression and association, safety and security, right of worship and property, and for all the people equally, without class, creed, religion and distinction.

Failure to meet the challenge would be a national betrayal and history will record a verdict against those whose duty it is to protect the unity, integrity and sovereignty of India, its institutions and its people.



## Notes

1. Exchange of communications between India/Pakistan prior to filing of U.N. complaint, included in Lakhanpal's Essential Documents - page 60-90.
2. Before August 15, 1947, Junagardh and Hyderabad States did not accede to India. The former ruler favoured Pakistan and the latter desired independence. Both, after people's sovereignty prevailed, joined India. Pakistan then opposed a plebiscite in these States as well as in J&K State.
3. Regarding U.N. resolutions on Kashmir and Pakistan and comments thereon, Dr Bhutros B Ghali, Secretary General, in an exclusive interview to daily Excelsior on September 9, 1994 said: "U.N. resolutions are only recommendations". He expressed himself against: "A peculiar tendency on the part of some people who appear interested in wrongly interpreting the role of the U.N. and its resolutions".
4. J&K Constituent Assembly was convoked by the ruler, and after holding elections, it was inaugurated on November 5, 1951, by Sheikh Mohd. Abdullah, the then Prime Minister, whose address forms Appendix III. The new Constitution was adopted on November 17, 1954, which under section 3, affirmed the accession of J&K to India.
5. Sheikh Abdullah was present at the conference at Lahore (*Aatish-e-Chinar*, page 257). No resolution on Kashmir was passed at the meeting. It was the feeling that Hyderabad must be protected, even at the cost of Kashmiri Muslims.
6. Professor Maurice Mendelson, well-known British jurist and international law expert opined: "The Kashmiris do not have the right of self-determination or secession". It was published in the International Committee of Jurists' Report titled, *Human Rights in Kashmir - Report of a Mission*, released in London on May 25, 1995. The Professor said that under the India Independence Act, 1947, Lord Mountbatten had no authority to put any conditions on the ruler's right to accede.
7. The Delhi Agreement 1957 (included as Appendix IV) and the Delhi Accord 1975 (Appendix VII) between the leaders of India and Kashmir are self-explanatory. The Simla Agreement between Indian and Pakistan Prime Ministers of July 2, 1977, is given in Appendix VIII.



## Chapter 6

### *Genesis and Dilemma of Article 370*

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Sardar Patel, Minister of States, declared in the Indian Constituent Assembly in 1950: "In view of the special problem with which the Jammu & Kashmir Government is faced, we have made special provisions for the continuance of the State with the Union, on the existing basis." These arrangements were incorporated in Article 370 (Article 306A of the Draft) of the Constitution of India, and became effective from January 26, 1950.

In the perspective of earlier historical and contemporary happenings, some people are prone to the conclusion that Indian leadership<sup>1</sup> had mishandled the political and constitutional relationship with Kashmir, wrongly granted the State a special status and, shortsightedly introduced Article 370 in the Indian Constitution<sup>1</sup>.

This Article, they tend to believe, is the fountainhead of all the troubles in Kashmir, spawning disunity and separation, strengthening autonomy and privilege and creating an inward-looking and corrupt oligarchy. The solution: Abrogate Article 370.

To others, the relevant provisions were appropriately established to strengthen the umbilical chord between Jammu and Kashmir and India, in a spirit of democracy, conditioned by consultation and concurrence on extension of Indian enactments to Jammu & Kashmir State, in accordance with the terms of accession, the restrictions laid down by the ruler and the popular wishes of the people. Significantly, its provision covers the inclusion of Jammu & Kashmir State in the Indian territory, under Article 1 of the Constitution of India.



In the light of historical developments, and constitutional evolution, one must dig deep to discover the genesis of the Kashmir imbroglio. We must carefully take into account and objectively evaluate the crucial aspects of the distant and recent past, the pervading internal and external compulsions then and now, and examine the rationale behind the political developments in India and Kashmir, before rushing to preconceived conclusions or opting for predicaments and dilemmas, where none exist.

During the last century, the creeping advance of Russia into Central Asia and the maintenance of the monopoly trade routes to Lhasa and China by Jammu & Kashmir State, caused deep apprehensions in the minds of the British about the State's rulers. They decided to exercise supervision over its border activities, control the State administration and base a Political Resident in Kashmir against the wishes of the Maharaja, to exercise overall authority. British and other selected administrators were imposed on the State to do their bidding, which undermined the authority of the ruler<sup>2</sup> and resulted in the deposition and reinstallation of Maharaja Pratap Singh.

The British indulged in political intrigue, fostered Muslim majority aspirations and encouraged communal representations, on one pretext or the other, to weaken the ruler and to make Kashmir safe for their imperial interests. This created disaffection against the ruler, promoted disharmony amongst the different communities and emboldened majority agitation, in line with the British pro-Muslim bias and policy of divide and rule in India.

Later in 1946, steps taken by the ruler, also contributed to Muslim disaffection by embarking on the ruthless repression of the Jammu & Kashmir National Conference for its 'Quit Kashmir' agitation and trying to destroy the organisation and its influence amongst the Kashmiris. It is then that Pt. Nehru rushed to study the situation and intervene but was arrested at the border and prevented from reaching Srinagar.

The State administration propped up the communal Jammu & Kashmir Muslim Conference (linked with Jinnah's Indian Muslim League, which supported the demand for Pakistan). It facilitated



the farcical election of Muslim Conference candidates to the State Assembly, by rejecting the nominations of all Jammu & Kashmir National Conference candidates.

By such senseless patronage, the State tragically weakened the nationalist forces and strengthened communalism and separatism amongst Muslims, especially when the top nationalist leaders were behind bars and the rank and file, suppressed. The leaders of the Muslim Conference, such as Maulvi Yusaf Shah and Ch. Ghulam Abbas, supported by the State, formed the vanguard of the Pakistani movement in the State. Later, they fled and took up high positions in the Pak-occupied administration, including that of so-called President. The policy of the Jammu & Kashmir Government caused irretrievable damage to nationalism in Kashmir, and eventually to Indian interests.

1947 proved a crucial year for Jammu & Kashmir and India. Britain declared that it would hand over power on August 15, 1947, to two dominions, India and Pakistan, the latter to be carved out of, contiguous Muslim majority areas. Paramountcy exercised over the native States by Britain, would revert to the rulers. Under the India Independence Act, the native rulers were free to accede to either of the two dominions before August 15, 1947.

On the issue of accession, the approach and the policies of the Indian National Congress and the All India Muslim League were diametrically opposite. The Congress<sup>2</sup> did not recognise the competence of the rulers to remain independent and did not accept as binding after Independence, treaties, sanads, etc., they had contracted with Britain. The Congress also insisted upon the confirmation of a ruler's decision by the free will of the subjects. On the other hand, Jinnah considered the rulers completely free to accede as they wished, or to remain independent. He offered them guarantees to uphold their decisions. By such exhortation, he had intended to queer the pitch for the emerging Indian Dominion, especially through sympathetic Muslim rulers. Jinnah wanted the decision of the rulers of Hyderabad and Junagadh to be enforced, but demanded a plebiscite for J & K State, irrespective of the ruler's decision on accession.



All States acceding to India, except Jammu & Kashmir, Hyderabad and Junagadh, filed their Instruments of Accession before the due date, which became effective from the date of acceptance. Had the Maharaja of Jammu & Kashmir signed the Instrument of Accession before August 15, 1947, as prescribed, subsequent complications would not have arisen. He, however, forsook the opportunity, even within the extension of two months allowed to him. Instead, he was keen to establish an independent sovereign state; and offered and entered into a standstill agreement with Pakistan (even before its constitutional birth) on August 12, 1947, for maintenance of various essential services, through its designated territory. He, as stated earlier, asked for similar arrangements from India, but no agreement was concluded.

The Maharaja's decision to accede to India came on October 26, 1947, when his State was almost overrun by invaders from and through Pakistan territory, after refusing to let essential supplies to pass on to the State and forcing an economic blockade upon it. He appealed to India for armed help and, after accepting the accession on October 27, 1947, India airlifted its army to Srinagar for the defence of the State, pushed back the invaders and saved the Valley.<sup>3</sup>

In signing the Instrument of Accession (Appendix I), the Maharaja conceded three subjects, viz, defence, external affairs, and communications, for which India would be responsible and its Parliament could make laws. He retained for himself, his heirs and successors, all the residual sovereign powers, denied any obligation to abide by the Indian Constitution, and asserted complete protection for all Jammu & Kashmir laws, then in force.

It is this Instrument, that forms the umbilical cord for the authority and constitutional linkage between India and Jammu & Kashmir State. It is a pity that appropriate consideration is not given to this basic document, its terms and its full implications. To provide the constitutional framework for the implementation and acquisition of authority granted to India under the Instrument of Accession, Article 370 was devised in the Indian Constitution. This Article (reproduced in full in Appendix II) also incorporated a



procedure which established a framework for expanding the sphere of the legislative authority of the Indian Parliament over Jammu & Kashmir State and included the following provisions:

- i. Article 1, confirms that Jammu & Kashmir is part of the territory of India.
- ii. Article 238 (relating to part B State) did not apply to Jammu and Kashmir. In any case, the categories have since 1957 been abolished.
- iii. Affirming power of the Indian Parliament to extend laws to Jammu & Kashmir, in respect of the three acceded subjects, in consultation with the Government of Jammu & Kashmir.
- iv. On other matters, Parliament's approved legislation may be extended to Jammu & Kashmir, with the *concurrence* of the State Government.
- v. Jammu & Kashmir Government is defined as the recognised head of State, acting on the advice of the Council of Ministers.
- vi. The President of India is authorised to declare by public notification, the enlargement of the parliamentary powers of India, or declare that the Article shall cease to operate, or with what exceptions or modification, on the recommendation of the Constituent Assembly of the State.

The phraseology of concurrence in the article is taken from the American Constitution, where the Federal Government can take over charge of the State Government. Other steps were taken in pursuance of the Delhi Agreement of 1952, reached between the leaders of India and Jammu & Kashmir State and approved by the Indian Parliament and the Jammu & Kashmir State Constituent Assembly. Article (1)C reiterated that Article I of the Indian Constitution, defining the territory of India, as inclusive of Jammu & Kashmir State, would apply and thus fortify the relationship between the two.

Article 370 laid down the mode of procedure prescribed and the manner in which additions could be made to the subjects, authorising the President to do so in concurrence with the Jammu & Kashmir Government.



Another crucial development in regard to the status of other States acceding to India, is generally and surprisingly ignored. It is not realised that such States, with the exception of Jammu & Kashmir, subsequently agreed to abide by the Indian Constitution and signed *supplementary instruments*, resulting in their integration, in due course, with India and loss of individuality as separate States, as per the plan implemented by Sardar Patel.

The ruler of Jammu & Kashmir, his heirs and successors, did not follow suit, but stressed upon autonomy, based on the Instrument of Accession. This refrain was taken up by the ruler's successors in Jammu & Kashmir, in terms of identity and special interests. Had the ruler taken similar steps, as other acceding native States, he would have saved the country from subsequent problems. In following his chosen path, the accession to India did not become smooth, expeditious and free from complications, and pathetically, the ruler was not able to protect and preserve his own throne and privileges as well.

The National Conference passed a unanimous resolution on October 27, 1950, for convening of a Constituent Assembly for Jammu & Kashmir State, pursuant to a proclamation of the ruler dated March 5, 1948, and the Head of Jammu & Kashmir State, in his inherent authority as a ruler, issued a proclamation on May 1, 1951, for convoking a Constituent Assembly for the State (elected on the basis of a free, direct and secret ballot by all adult citizens of the State), for framing a Constitution for this State, and deciding other matters. The results of the exercise of adult franchise were over-whelmingly favourable and expressed the free will of the people of the State on the future constitutional framework and their relations with India. Pursuant to the Delhi Agreement of 1952, the Government of India issued a Presidential order, a Constitution (Application to Jammu & Kashmir State) Order 1954, under Article 370, amending various articles of the Indian Constitution in their application to the State.

A constitution for Jammu & Kashmir State was framed by the Constituent Assembly in 1956, and was adopted in 1957. It reiterated, in an unamendable section, that the State of Jammu &



Kashmir "is and shall be an integral part of the Union of India". It, further incorporated the basic terms of the Instrument of Accession and the political understanding reached in 1952 at Delhi.

The constitutional set-up of Jammu & Kashmir State is therefore, a complex intertwining of the Constitution of India, the Constitution Orders issued by the President, from time to time, and the relevant provisions of the Jammu & Kashmir Constitution. It is vital to recognise the interrelationship between the constitutional stipulations for a correct perspective.

To understand the reasons for granting a special status to Kashmir, one would have to appreciate the predicaments and constitutional compulsions ingrained in Article 370, wherein lie the means for strengthening the links between the State and India, by mutual understanding, agreement and consent. It is noteworthy that nearly 200 Indian enactments have been extended and applied to the State and 27 before 1953. These relate to financial relations with the State, extension of the powers of the Supreme Court and provisions relating to the audit, accounts and administrative services of India. The option and scope for further strengthening of Indo-Kashmir links is open under Article 370 through mutual and democratic cooperation and interdependence, the essence of good polity.

It is sometimes argued, rather simplistically, that Article 370 was incorporated in part XXI of the Indian Constitution, under the heading "Temporary, transitional and special provisions", and as such, should not remain permanently in the statute book. But there are no stipulations in the Article itself beyond the heading nor is there any other constitutional reference, or directive to repeal it or call for its abrogation.

Similarly, Articles 371 (A to H inclusive) relating to Nagaland, Assam, Manipur, Andhra Pradesh, Sikkim, Mizoram, Arunachal Pradesh and Goa also are included in Part XXI, as above, without the least indication of abrogation, either verbal or written.

Some of these provisions relate to ownership and transfer of land, its resources, justice, customary law and procedure, religious and social practices, public employment, education and other



important matters protecting the identity of the people of the State and other special interests.

If Article 370 is anathema to some of us, we should fairly and reasonably seek the removal of such anachronisms and insist on complete equality for all Indians under the law, throughout the length and breadth of the country. We should also move to exclude restrictions imposed under State land laws made under the State List (Schedule VII, List II) of the Constitution of India. But the retention of Article 370 has been agreed to by the Government of India and approved by the Indian Parliament, as part of the Delhi Agreement of 1952, and Accord of 1975, on the insistence of Jammu & Kashmir State, who could have refused to concur. Further reference to chapter five is invited in this context.

It has been vigorously advocated that the "Indian Constitution be amended under Article 368 by the Union Parliament, which represents the people of the State also, and Article 370 would stand abrogated." However, if we were to carefully study the proviso applicable to Jammu & Kashmir State under Article 368, it would be patent that such an amendment is involved in complicated concurrence procedures and to amend it is not so simple.

The proviso for 368 says: "Provided further that no such amendment shall have effect, in relation to the State of Jammu & Kashmir, unless applied by order of the President under clause 1 of Article 370", i.e. without consent of the Council of Ministers of Jammu & Kashmir Government.<sup>3</sup>

Justice A.S. Anand in his monumental book, *Development of the Constitution of Jammu & Kashmir*, on pages 140 and 238, explains the limitations involved in amending Article 368, vis a vis Jammu & Kashmir State. He has summarised the legal position thus: "This means that no such amendment, which is not acceptable to the Government of Jammu & Kashmir, can be applied to the State, even if the procedure for the amendment as laid down under Article 368 has been followed".

The proviso to this Article is in conformity with and protects the constitutional position and autonomy of Jammu & Kashmir State, within the framework of the Indian Constitution. It is



important to note that even if Parliament passes an amending bill, the same cannot be applied to Jammu & Kashmir, unless the President issues a formal order under clause 1 of Article 370, with the concurrence of the Jammu & Kashmir Government, on the advice of its Council of Ministers and provides a Constituent Assembly of Jammu & Kashmir State, approving the abrogation under clause 3 of Article 370. This clearly shows the constitutional hurdles that have to be overcome before Article 370 can be abrogated.

It has been hinted that such concurrence could perhaps be possible during a Governor's or President's rule. Any attempt to manipulate the required concurrence would be tantamount to a mockery of constitutional propriety, a repudiation of guaranteed protection and the violation of the letter and spirit of solemn agreements.

It has also been argued that for the effective enforcement of Article 355 (regarding external aggression and internal disturbance), Article 370 may be an impediment and, therefore, must go. However, in view of Justice Anand's opinion, the concurrence of Jammu & Kashmir Government alone would make it possible and legally effective.

Similarly, Article 35A, as applicable to Jammu & Kashmir State, protects State laws regarding rights of permanent residents in respect of land, residence and employment, etc. To suggest that "any Indian can settle in Jammu & Kashmir, and all irrational, unjust and anachronistic provisions of the Jammu & Kashmir Constitution, in regard to the rights of settlement and citizenship, which are incompatible with the Indian Constitution, would go", is incorrect legally and constitutionally. In fact, a large number of articles of the Indian Constitution itself, in so far as their applicability to Jammu & Kashmir State is concerned, have been modified by President's Constitution Orders under clause 1 of Article 370, and especially Order No. Co 48 of 1954, and subsequent orders issued, to include exceptions and modifications.

In this context, reference is invited to the Supreme Court of India decision, which has held as follows in a case.



(Khazan Chand vs. State of Jammu & Kashmir, AIR 1984 T62/6T.) "The Constitution of India, however, does not apply in its entirety to the State of Jammu & Kashmir because that State holds a special position in the Constitutional set-up of our country. Article 370 of the Constitution of India makes a special provision in respect of Jammu & Kashmir. Under sub-clause (c) of clause (1) of Article 370, the provisions of Article 1 and 370 apply in relation to that State, subject to such exceptions and modifications as the President may specify by an order issued with the concurrence of the Government of that State. Thus, by reason of the application of Article 1 to the State of Jammu & Kashmir, by sub-clause (c) of clause (1) Article 370, the State of Jammu & Kashmir is one of the states which form the Union of India, and by virtue of sub-clause (d) of clause (1) of that Article, so far as the provisions of the Constitution, other than those of Article 1 and Article 370 are concerned, the President of India has the power, with the concurrence of the Government of the State of Jammu and Kashmir, to issue an order specifying which of them shall apply to that State and whether such provisions shall apply in their entirety or subject to such exceptions and modifications, as may be specified in that order. Article 370 also envisages the convening of a Constituent Assembly for that State and the framing of a separate Constitution for it. In exercise of the power conferred by clause 1 of Article 370, the President of India, with the concurrence of the State of Jammu & Kashmir, has made the Constitution (Application to Jammu & Kashmir) order 1954 (C.O. 48). This order deals with the entire constitutional position of the Jammu and Kashmir State, within the framework of the Constitution of India, except only the internal constitution of the State Government, to be framed by the Constituent Assembly of that State. The Constituent Assembly of the State of Jammu & Kashmir framed its Constitution repealing and replacing its earlier Constitution. This new Constitution called the Constitution of Jammu & Kashmir, was adopted and enacted by the Constituent



Assembly of the State on November 17, 1956. After the adoption of the Constitution of India, the President of India promulgated, the 'Constitution' (Application to Jammu & Kashmir) order 1950, on January 26, 1950, in accordance with the provisions of Article 370 of the Constitution and thus the basis for a constitutional relationship between the Union and the State was defined."

It is obvious that the constitutional position has been complicated and scrambled by the interdependence and interlinking of the provisions of the Indian Constitution, the Constitution Orders issued by the President and the Constitution of Jammu & Kashmir State. The situation is, therefore, difficult for a layman to disentangle. Appendix V tabulates summarily, the impact on the Indian Constitution by stipulation of this and other Presidential orders.

At this stage, it may be appropriate to refer to some important aspects of the Jammu & Kashmir Constitution. It was adopted on January 26, 1957, and has been in force since. The preamble states: "We, the people of the State of Jammu & Kashmir, having solemnly resolved, in pursuance of accession of this State, which took place on the twenty-sixth day of October 1947, to further define the existing relationship of the State with the Union of India as an integral part thereof, and to secure to ourselves, justice—social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and to promote fraternity among us all, assuring the dignity of the individual and the unity of the nation; in our Constituent Assembly, this seventeenth day of November, 1956, do hereby adopt, enact and give to ourselves this Constitution."

The preamble, which sets forth the purpose and objective of this constitution is self-explanatory, and apart from reaffirming the accession to India, aims at the unity of the nation and is in line with that of the Constitution of India. Its critics observe that Jammu & Kashmir is the only State within the Union of India that has a separate constitution and in the interest of the unity and integrity of the country, this anomaly should be done away with and the possibility of any fissiparous tendency eliminated.



However, standing by itself, the procedure for amendment of this Constitution rests in Section 147, which requires a two-thirds majority in the State Legislative Assembly to make it effective. No bill or amendment seeking to make a change in (a) Section. 147 itself regarding its amending powers or procedures, or (b) Section 3 relating to Jammu & Kashmir State being an integral part of the Indian Union, or (c) Section 5 regarding the residual powers of the State, or (d) affecting the powers or authority of the Indian Parliament to make laws for the State under the Indian Constitution, can be passed by the State Legislative Assembly. These provisions are sacrosanct.

In Part III, Sections 6 to 10 of the State Constitution are included special provisions in respect of 'permanent residents' (the erstwhile State subjects) incorporating the State Subjects Regulations of April 1927, and June 1932, with a cut-off date of May 14, 1954. However, amending these provisions is possible under Section 9, by a two-thirds majority of the total membership of the Jammu & Kashmir Legislature. This shows the importance accorded to the relevant regulations and the protection afforded to the permanent residents, by making it difficult, if not impossible, to muster the required majority in the legislature.

Historically, the people of the State had been agitating for the protection of their jobs and lands since 1891. It was only in 1912, for the first time, that half-hearted attempts were made by the Maharaja's administration to consider and grant some relief to the residents. This did not satisfy the people and the Kashmiris continued the struggle and suffered for the cause.

Later, the landmark notification of April 20, 1927, established classes of 'State subjects' and defined their preferential rights over local land, government jobs and scholarships. The protection granted, was, in due course, included in the State land and other laws and rules. But senior posts still eluded the Kashmiris.

The book, *Kashmir Awakes*, by B.L. Sharma (Vikas-London, pages 66-67) comments:

"The first effect of extension of British control to Kashmir was the reorganisation of civil departments to fill important posts in which administrators were brought into the State from Punjab...



Thus employment, which could have given a new lease of life to the sagging economy of the land was given to outsiders, whose interests lay not in the State but elsewhere, and who would depart with their savings on the completion of their service. The hue and cry which the measure raised, led in due course to a distinction which was made between resident and non-resident subjects... But the new definition helped the residents of the province of Jammu, rather than those of the Valley, Ladakh, or Northern areas, for the Dogra ruler gave preference to the Hindu Dogras of Jammu..."

The Kashmiris were barred from military service and unemployment in the State (the State was the major employer), accentuated joblessness and economic difficulties. With the heavy influx of outsiders since 1889, the Kashmiris were gravely apprehensive that the prosperous outsiders would buy them out and deprive the poor agriculturists and small landowners (who formed 90 per cent of the population) of their only means of livelihood. Hence, protection over alienation of land was demanded. Interestingly, the British demand for authority to buy land for tourism and residential purposes in Kashmir, was also diplomatically turned down by the ruler.

It is evident that the State Subject regulations granting the locals preference over jobs and lands in Jammu & Kashmir are old and not introduced after Indian Independence, nor by the Government of India, as mistakenly assumed by some people. Article 370, did not initiate, or authorise the restrictions on land and jobs in the State, and by itself neither protects the locals, nor debars outsiders. If it is now intended to do away with the special dispensation favouring the permanent residents of the State, the only way is to take necessary constitutional steps to amend the Jammu & Kashmir Constitution and the relevant State laws and regulations in accordance with the legal procedures laid down and remove the proviso in the Indian Constitution on the request of the Jammu & Kashmir State.

To explain the procedure for abrogation of Article 370, the relevant provision is quoted below:

"Notwithstanding anything in the foregoing provisions of the article, the President may, by public notification, declare that this



Article shall cease to be operative, or shall be operative only with such exceptions and modifications, from such dates as he may specify provided that the recommendation of the Constituent Assembly referred to in clause 2 shall be necessary, before the President issues such a notification."

It may be recalled that the Jammu and Kashmir State acceded to India in October 1947 through the Instrument of Accession and not under Article 370, which was introduced later to provide for constitutional means to implement the power and authority acceded and in terms of the political agreement reached in 1952. So, if Article 370 was legally abrogated, it would not invalidate the accession. The resultant position might, at worst, have been the relegation of the Indian and Jammu & Kashmir link to the three acceded subjects. The strengthening of the link, or the greater integration of the two could hardly ever be achieved by abrogation of this article.

At the same time, the mechanism for extension of Indian enactments to Jammu & Kashmir would be lost, despite the terms of Article 1 of the Indian Constitution and the schedule defining the territory of India as inclusive of Jammu & Kashmir State.

Furthermore, under the proviso to Article 3 of the Indian Constitution as applicable to Jammu & Kashmir, no alteration to the area, boundary, or name of the State can be effected without the consent of the State Legislature. Those who are keen on greater integration of Jammu & Kashmir with India, must study in depth the prevailing constitutional complications, obtain sterling professional and constitutional advice which should be unequivocal, irrefutable and conclusive in its terms, so as to preclude subsequent consternation and embarrassment. That is the dilemma referred to earlier.

Some politicians and a few well-meaning media persons have, off and on, suggested grant of greater autonomy to Jammu & Kashmir State, as a solution to the present impasse in the Valley. But it is not realised that the State, in fact, enjoys the highest degree of autonomy in the Indian Union. It is the only State in India that has a separate Constitution to preserve and protect its special interests and autonomy and a State flag of its own. The Indian



Constitution further fortifies its position by complementary provisions. Also many of its articles, relating to the States are not applicable to Jammu & Kashmir, for example, Article 153 to 217 and many out of 219 to 239. There are about 110 articles in the Indian Constitution, which stand amended under Constitution Orders, in their applicability to Jammu & Kashmir State. Similarly, laws under the State List, or Concurrent List (Schedule Fifth & Sixth) are not automatically extended to this State.

The impact of the proviso to Article 368 (regarding the amending power of the Parliament) has been discussed earlier, to show the limitations on the Indian Constitution in respect of Jammu & Kashmir State.

It may be noted that under Article 370, the laws made by the Indian Parliament in regard to the three acceded subjects, are extended to Jammu & Kashmir State *only after* consultation with the State government, and all other laws could *never apply to the State, except with the consent or concurrence* of the Jammu & Kashmir Government. The grant of concurrence is squarely a constitutional and political exercise of autonomy by the State Government, acting strictly "on the advice of the Council of Ministers", and is not an administrative act, nor a secretarial function. In effect, the State holds the trump card, which is tantamount to a veto against prospective laws made by the Indian Parliament for extension to the State. What more autonomy should a State want and have?

Apart from the above, special attention is invited to Section 5 of the Jammu & Kashmir Constitution, which reads thus:

"The executive and legislative power of the State extends to all matters, except those with respect to which Parliament has the power to make laws, under the Constitution of India."

It would be clear from the above, that all residuary powers are vested in the State, except laws relating to the three Indian acceded subjects. If this is not extraordinary autonomy and self-government for the State, then what is, unless the votaries of greater autonomy really mean secession or freedom for it to carve an independent State in Kashmir.



We have earlier referred to sections 6 to 10 of the Jammu & Kashmir Constitution in regard to the special privileges of permanent residents in the State which are denied to Indian citizens outside the State. In this context, it may be of interest to have a look at its Section 10 which reads:

“The permanent residents of the State shall have all the rights guaranteed to them under the Constitution of India.”

This additional constitutional privilege granted under the 1952 Agreement seems to go even beyond the letter and spirit of greater autonomy, as many critics feel.

The protagonists of greater autonomy do not point out any restrictions imposed by India unilaterally, nor refer to any Indian law made applicable to Jammu & Kashmir, which has adversely affected the autonomy of the State, or retarded its progress. They should have justified their demand by pointing out specific provisions or substantive regulations which offended the autonomy accorded in the 1975 Accord. The ‘pro-autonomy friends’ should have spelt out the exact constitutional changes desired by the people, and needed to be considered, for modification or deletion. In truth, the political leadership of the State have deliberately and systematically, suppressed and withheld from the people, the existing wide autonomous provisions and powers available to Jammu & Kashmir State. They have made no sincere effort to explain the actual status to the people nor have the media highlighted it in detail.

The catch-phrase, ‘autonomy’, denied to the Kashmiris, was used to political advantage, without caring for truth and justice. Shockingly worse is the impudence of some votaries to ask for the steps that the Government of India would be prepared to take and the concessions it would be willing to grant, even prior to the start of negotiations. The demands for announcing a political package even before the start of negotiation for restoration of peaceful conditions, or a political process (including democratic elections), are thus, not only illogical and demonstrative of unreality, but a political hedge. The politicians indeed, sought a gift package. In effect, the acquisition of greater autonomy might be used as a



political plank for gaining political power in the State, if and when elections are held.

As Pakistan tries to tempt many Kashmiri Muslims on religious grounds, it may be useful to compare the constitutional position of the States of India, with those in Pakistan. Pakistan never agreed to nor allowed any constitutional arrangements to grant or protect the autonomy or identity of the States that acceded to it and merged with complete loss of identity, in its northern area of Jammu & Kashmir State, like Gilgit, Baltistan, Chilas, etc., without an iota of autonomy to these areas. These areas are excluded from Pak Occupied Kashmir. Pakistan gifted more than 2,000 square miles of Jammu & Kashmir territory (more than the size of the Valley of Kashmir) under its occupation to China, for its own benefit, rather than for reciprocal advantages to Jammu & Kashmir State or Pakistan. Pakistan Occupied Kashmir (POK) is administered as a subject colony, or vassal, through the Ministry of Kashmir Affairs, without any autonomy.

The fate of POK, according to Pakistan, will finally be decided in the unforeseeable future under Article 257 of the Constitution of Pakistan, and what type of State structure and autonomy would be actually agreed upon and conceded to these areas, is a matter for conjecture, rather than assurance. What degree of autonomy is available to the Sindhis, the Baluchis, the Pakhtoons, etc., and what elements of self-government are open to the Mohajirs, who live as outcastes and expatriates, even after 50 years? What religious freedom have the Shias, the Ahmedis and the other minorities been assured of in Pakistan? Judging from this, the Kashmiris can never expect from Pakistan the extent of autonomy and freedom that the people of Kashmir have already had since 1948.

As for Pakistan's promotion of the Kashmiris' right to self-determination, it is applicable at best to colonial peoples under alien domination and non self-governing States. It does not include the right of secession for parts of a State. For a study of autonomy in relation to Article 370, we may go back to chapter 5. The Jammu & Kashmir State can proudly boast of exceptional constitutional autonomy but can its politicians ensure against perversion of and



deviations from its high prerogatives? It is said that the exercise of autonomy in the past in Jammu & Kashmir has left much to be desired region-wise. It is because of this that the aspirations of all areas and communities of the State have not been met.

It is an overriding democratic principle that no part of an autonomous State should ever feel neglected, nor any of its people discriminated against, on any ground whatsoever. The Jammu and the Ladakh regions of Jammu & Kashmir (ethnically and religion-wise different and economically backward) covering more than 70 per cent of the State and with 40 per cent of its population, have been clamouring for appropriate measures to promote and protect their ethnic, cultural and religious interests and to guarantee a fair and equal political status for them in the State.

In order to ensure that all the parts of the State equally enjoy the fruits of freedom and good governance, some lasting solutions will have to be found to assure peace, concord and progress for all the people of the State, without exception. The minorities of the State must be guaranteed protection for their life, property, religion and economic well-being. The State leaders and Government of India should, sooner rather than later, consider political arrangements for the special requirements of the aggrieved regional, ethnic and other minority groups, who have felt wronged and agonised in the last 50 years, under the overwhelming autonomous conditions in Jammu and Kashmir. These people could naturally not be expected to countenance any further prerogatives for Kashmir, without having their interests well and truly protected for their future peace and progress in the State.

Much of what has happened in this behalf, has been blamed on the impact of Article 370. Therefore, discordant voices on the abrogation of this article of the Indian Constitution are heard from time to time. However, the Kashmiri Pandits and others must carefully evaluate the benefits, if any, that would accrue to the community or the State by its abrogation, before jumping on the bandwagon. It may be of interest to recall, that the Jammu and Kashmir Commission of Inquiry 1968,<sup>4</sup> after deep deliberation observed:



*Genesis and Dilemma of Article 370*

“We think that at present it would be inadmissible to recommend that Article 370 be abrogated. Keeping in view the progress that has already been made over the years in the integration of Jammu & Kashmir with the rest of India, we feel that it would be prudent to leave it to the Government and the people of the State of Jammu & Kashmir themselves to decide when the Article should be abrogated.”<sup>4</sup>

Another aspect of the Kashmir problem, mooted by some politicians, is that the relations between Jammu and Kashmir State and India, should be restricted to the three acceded subjects. Apart from the Instrument of Accession of October 1947, Section 5 of the Jammu and Kashmir Constitution authorises extension of Indian laws relating to these subjects to Jammu & Kashmir, while reserving the residuary powers in the State Legislature.

As stated earlier, under Article 370(1) (b) (ii), other Indian laws could be extended with the concurrence of the Jammu & Kashmir Government, as the President may by order specify. Presumably, the suggestion envisages that no Indian law (on matters not acceded to) should, in future, be applied to Jammu & Kashmir. This, in effect, would be tantamount to abrogating Article 370 and the earlier and subsequent understanding, accords and agreements. It is also not clear from the suggestion, if it was intended to break financial and other links of Jammu and Kashmir with India, through which Central planned and unplanned financial grants, loans and other contributions are received by Jammu & Kashmir, on par with, or better than other States, without which the State could not sustain or support itself, while recognising the limitations of the State's own resources. The proponents of such suggestions need to carefully evaluate and fully comprehend the impact of these suggestions on Jammu & Kashmir State and its people.

If 1952 has any significance, as reflecting the past autonomy of the State, it might be recalled that about 27 Indian enactments had been extended, in accordance with Article 370, to Jammu and Kashmir between 1948 and 1953 during Sheikh Sahib's regime, for the short and long term need and benefits of the people. Apparently,



these laws did not infringe upon the autonomy of Jammu & Kashmir. Even after 1953 and the exit of Sheikh Sahib from power in Jammu & Kashmir, the autonomy granted under the Jammu & Kashmir Constitution, the Indian Constitution and the Constitutional Orders, the laid down procedure for extension of Indian laws was scrupulously followed. The autonomy visualised by the 1952 Delhi Agreement with the Sheikh was not unilaterally violated or diluted by the Centre, nor were the residuary or other powers of the Jammu & Kashmir Constitution curtailed by the Government of India. In the Delhi agreement of 1952, the retention of Article 370 was agreed to mutually and respected.

Indian laws, extending to Jammu and Kashmir during 1953 to 1975, were not by force, fraud or deceit but in strict compliance with the required concurrence or consent procedures under its Constitution by the Jammu & Kashmir Government, headed by Chief Ministers, Bakshi Ghulam Mohd., G.M. Sadiq and Syed Mir Qasim, within the letter and spirit of the Delhi Agreement and the Jammu & Kashmir Constitution. The laws were extended in the urgent and overwhelming interests of the people of the State and wherever necessary, the Jammu & Kashmir Constitution was amended accordingly by the State.

In addition, to entitle the State to receive financial assistance, necessary arrangements had to be made, just like in other States and territories in India. Any misgivings on one-sided steps by the Centre in regard to the dilution of the State's autonomy are, therefore, misplaced and mischievously created to mislead the people. It is up to the Jammu & Kashmir Government to carefully scrutinise and evaluate each prospective Indian legislation, before grant of the necessary statutory concurrence or consent for its extension to the State. At the same time, if an essential or beneficent enactment is denied concurrence and is not extended to the State, it would be only at the peril of its people for which they would vigorously demand retribution.

In 1974, negotiations for the return of Sheikh Sahib actively to Jammu & Kashmir politics were started. In the words of the late Prime Minister Indira Gandhi, "to remove any misunderstanding



and to secure the active cooperation of all democratic, secular and progressive forces of the country", Indira Gandhi entered into what is called the 1975 Delhi Accord with Sheikh Sahib on February 24, 1975. Sheikh Sahib welcomed it as "the reestablishment of trust and confidence, and, we believe we have established a solid foundation for mutual cooperation".

The Sheikh was offered the Chief Ministership of Jammu and Kashmir and took office, the second time, in March 1975.

It may be useful to briefly touch upon some of the important features of this Accord, and the 1952 Agreement. Both reaffirmed the retention of Article 370, in order to protect the special interests, identity and autonomy of Jammu & Kashmir State. The 1975 Accord preserved the Agreement of 1952, and reserved the differences, in the larger interests of the country and the State. It was conceded that while residuary powers would continue to remain with the Jammu & Kashmir Assembly, "the Centre would retain control of any legislation dealing with the sovereignty of India."

The 1975 Accord inter alia noted as follows: "With a view to assuring freedom to the State of Jammu & Kashmir, to have its own legislation, on matters mentioned in the State Constitution like welfare measures, cultural matters, social security, personal and procedural laws, in a manner, suited to the special conditions of the State, it is agreed that the State Government can review the laws made by Parliament and extended to the State after 1953, on any matter related to the Concurrent list and may decide which of them, in its opinion, needs amendment or repeal. Thereafter, appropriate steps may be taken under Article 254 of the Constitution of India — the grant of the President's assent would be sympathetically considered. The same approach would be adopted in regard to laws to be made by Parliament in future, under the Proviso of Clause 2 of the Article. The State Government shall be consulted regarding the application of any such law to the State and the views of the State Government shall receive the fullest consideration."

The Accord not only covered the Indian laws extended to Jammu & Kashmir between 1953 and 1975, but designated a procedure for the application of new laws made in India, *in the future*, to the State.



The above terms and conditions of the Accord should be the correct basis for a review of past enactments and for adopting any future laws, while recognising the respective positions and understanding on autonomy and sovereignty. Obviously, under this Accord, the responsibility for review of past legislations and consequential recommendations to the Centre, rested with the Jammu & Kashmir State. During Sheikh Sahib's 1975 to 1982 regime, no valid case for review by the State was made, as "it was not intended to turn the clock back." Similarly, no recommendation was made, as envisaged by para 4 of the Accord, to the Centre by the two successive Chief Ministers, regarding review of any laws extended to the State after 1953. Therefore, no action could be taken by the Centre and Article 254 of the Indian Constitution was not invoked for review, as envisaged in the Accord.

It is important to note that under Article 370(1) (b&d), no law passed by the Indian Parliament relating to non-acceded subjects, could have been extended to Jammu & Kashmir, without the concurrence of the Council of Ministers of the State. It is also a well known principle of law that such consent could not have been denied or withheld, unreasonably or capriciously.

The 1975 Accord continues to be in force and for a review to be undertaken of the past laws, and to be acceptable to the people, it should be by a democratically elected Government in Jammu & Kashmir, and not by any administration under a governor's or president's rule. In the light and spirit of the Accord, had there, however, been an issue of policy or procedure, in doubt or in dispute, that should have been resolved by mutual discussion, understanding and good-will. Under its own Constitution, and the support of the Indian Constitution under Article 370, the President's orders and the Accord of 1975, Jammu & Kashmir State is manifestly assured of the highest degree of autonomy unmatched by any State in Pakistan, India and the subcontinent. Where is there any need for giving further autonomy to the Jammu & Kashmir State and for what purpose? What additional powers would appease the agitators and what could possibly and legally be granted, is the question?



For Jammu & Kashmir, the existing constitutional autonomy and the multifarious benefits, i.e. financial, commercial and industrial and the political and international weightage extended by its association with India, are colossal, which in its objectivity (or in its sanity), Jammu & Kashmir State cannot ignore or renounce, even under pressure of religious fundamentalism or international political intrigue.

Some champions of the abrogation of Article 370 mistakenly believe that this step would strengthen the Indian position in Jammu & Kashmir, while other Kashmiri politicians wrongly assume that with greater autonomy, Indo-Kashmir links would weaken to their fundamentalist advantage. It is a great pity that in their adversarial stand and outlook there should be a contradictory basis for convergence of views, which could only damage the long-term interests of all the Kashmiri people.

Let not the fascination for doing away with Article 370, be emotional and ill-considered and the demand for greater autonomy be ignorantly pressed, without careful consideration of the existing and assured status, which needs to be widely publicised, in Jammu & Kashmir, in India and in other countries.

Let not Jammu & Kashmir and India be disadvantaged by tampering with the already existing constitutional relationship, resulting in serious damage and long-term detriment.

The situation earnestly calls for the highest degree of understanding, cooperation and goodwill, both inside and outside Jammu & Kashmir, so as to overcome current misunderstandings, bad feelings and strife, and in order to usher in continuous peace, amity, prosperity and progress for all in Jammu & Kashmir. The legal framework for protection of the autonomy of the State in future, as a *sine qua non* of democracy, is formally and firmly available to the State, and needs a careful and systematic exercise under the provisions of Article 370 of the Indian Constitution, reiterating the position, bereft of any dilemma.



Notes

1. *My Frozen Turbulence* by Jagmohan (1994) had also taken the line, indicated.
2. The All-India Congress Committee, reiterated by a resolution on June 15, 1947, that it does not recognise the right of a ruler to remain independent under the law and India Independence Act, 1947.
3. According to Supreme Court Justice A.S. Anand (author of *Constitution of J&K State*, 2nd edition, 1994): "The accession of Kashmir to India is quite analogous to the annexation of Texas by USA". The Mexican protests were disregarded on the ground that the "Republic of Texas is an independent power, owning no allegiance to Mexico and constituting no part of her territory or rightful sovereignty and jurisdiction". Excerpt from SAARC Law - India Chapter, New Delhi, Lecture Published by *The Times of India* in January, 1997. His book also refers to it.
4. The J&K Commission of enquiry, 1968, made detailed recommendations on development programmes, recruitment policies, educational and technical policies, irritations and tensions, administrative balances between areas, but, it seems that satisfactory progress to implement the recommendations has not been made, resulting in dissatisfaction.



## Chapter 7

### *Autonomy or Deaccession (I)*

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Since 1930, there have been covert and vague references to self-rule, democratic, or responsible government in Kashmir, and sometimes, riots or agitations. But these did not crystallise into a well-defined demand, supported by any political upsurge, until the cry for 'Quit Kashmir' was raised in 1946. The demand for 'autonomy' was related to and discussed during the State's accession to India.

Yet, politicians, media, administrators and people appeared neither clear nor precise as to what 'autonomy' implied and what should be its form and dimensions. There was no unanimity on the subject; and amongst political parties, on its concept, scope and framework. Depending on political leanings, many variants of a relationship with authority, were mooted and propagated, vaguely and incoherently.

Much later in the 1990s, even Kashmir's umbrella organisation failed to define its goal in specific terms, on the degree and quantum of autonomy, implied and desired. The J&K National Conference, who were the forerunners of the demand for autonomy, related it to the constitutional status of Jammu & Kashmir in 1953, as committed in the Delhi Agreement of 1952. But other views and voices were neither transparent, unanimous, nor consensual.

Autonomy, in its very nature means self-government or the condition of living under one's own laws; implies internal autonomy but not external freedom or separation from the parent country, or an aspiration of independence or '*azadi*'; the latter status falsely assumed non-existence of constitutional rights,



privileges and powers. Autonomy is symbiotically and inextricably linked with democracy. It is not a one way street with all rights and no obligations. Nor for that matter does independence mean absence of democratic responsibilities in the light of social, economic or political activities. So is autonomy not a *carte blanche* for exercise of power by an authoritarian majority, at the cost of or to the disadvantage or oppression of a minority or smaller sections of a populace, whose rights, interests and welfare must imperatively be protected and assured along with those of the majority.

But then, what is the meaning of 'autonomy'? What are its characteristics or implications? Autonomy includes:

*Firstly*, a measure of conditions or administrative freedom or self-sufficiency, in terms of a constitution or a charter of authority, laying down the delegation of powers, laws or bye-laws for a defined legal entity. It does not assume ignoring or overriding of such conditions and objectives of an autonomous body.

*Secondly*, it relates to specified subject matters and terms within the ambit of defined powers, rights and privileges.

*Thirdly*, it comprises a large measure of self-government and freedom to act, within law and within its specified area and delegated authority.

*Fourthly*, it devolves and incorporates the responsibility of protecting individual and common rights and freedom in the discharge of relevant legal obligations.

*Fifthly*, it embraces a code of good governance and administration, in the interests of all citizens and residents, irrespective of any caste, creed, religion and economic criterion.

Though these components are not all-inclusive, possibly these dimensions could include other variants, situations, conditions and regulations, but not in violation of constitutional authority, nor by denunciation of powers granted or separation from a country or a *coup d'etat*. In general, while judging the autonomy of a unit or State, consideration of the above parameters would be essential, and the acid test of the status, would be the degree of self-sufficiency and non-interference that the autonomous area is assured, within a charter.



It would be appropriate at this stage to record and evaluate the true facts regarding the constitutional status and democratic empowerment of J & K State, before and since Indian Independence. As the rule of the Maharaja was autocratic and did not share power with the people, in 1889, for the first time under the Dogras, a constitution of J & K Council was set up, which designated portfolios, departments for members, more for the convenience of administration than as steps towards democracy. No locals were members of the Council. The same year, Maharaja Pratap Singh was deprived of powers by the British for alleged maladministration and a Regency Council, under the supervision of the British Resident, was appointed to govern. The Maharaja's powers were partially restored in 1921. Partap Singh died in 1925, and Hari Singh took over as Maharaja of Jammu & Kashmir.

The year 1931 saw the Kashmiri Muslims agitating for redressal of grievances and discrimination suffered, which led to communal riots. In 1932, a commission presided over by Sir B.J. Glancy of the political office of the Government of India, was set up by the ruler and it made recommendations on matters including religion, education and employment; press and platform restrictions were removed, in line with British India. A "Kashmir Constitutional Reforms Conference" was set up which recommended establishment of a Legislative Assembly and defined its composition, powers and functions. To identify the people with the administration, a legislature with a non-official majority was originally recommended (later changed to an official majority) and a Constitutional Act promulgated, with legislative, executive and judicial powers, stipulated therein (Reg. I 1934.)

This Act provided for a Legislative Assembly, or *Praja Sabha* of 75 members with a franchise of less than three per cent of the population, based on literacy and income, while the Maharaja reserved for himself all existing legislative, executive and judicial powers. Legislation passed by the Assembly was not valid without assent of the ruler and many subjects were excluded from the purview of the assembly. The first assembly met in October 1934.



Realising that the Assembly was ineffective, powerless, and unable to satisfy public aspirations for responsible government, the people, with the Muslim Conference spearheading the movement, sent another memorandum to the Maharaja. In due course, the sympathy and support of the Congress was won, and other communities joined in opposing the autocratic government. On June 28, 1938, Shikh Abdullah proposed and won a vote for converting the Muslim Conference into the National Conference, open to non-Muslims. A "Responsible Government Day" was observed throughout the state under its auspices.

Reacting to the demand, the ruler announced a further constitutional advance on February 11, 1939, increasing the number of elected assembly members to a majority with an elected Deputy President and elected under secretaries. The new Jammu & Kashmir Constitution Act, 1939, was promulgated on September 7, 1938 by the ruler to consolidate and amend the laws regarding the governance of J & K State. However, sections 4 and 5 reserved for the Maharaja the vesting of the territory of the State in him and his being the source of all authority as an absolute monarch, with royal prerogatives defined in section 72. The rights, authority and power of the Executive were spelt out in Part II (a) Legislative Part III (b) and Judiciary in Part IV (d) There was, as noticed, a somewhat feeble attempt by these constitutional steps to associate the people with the administration. But they remained dissatisfied.

To pacify the people, a Royal Commission was set up by the ruler on July 14, 1943, to make further recommendations for political reforms. The National Conference on September 30, 1944 adopted the "New Kashmir Manifesto", as a political, constitutional, economic and social charter, defining the detailed objectives of the party, as a plan acceptable to the people and it was presented to the ruler.

On October 2, 1944, a plan, incorporating elements of dyarchy, was presented to the *Praja Sabha* for appointment of "two popular ministers". These ministers actually worked till 1946. In the meantime, the march towards India's Independence was accelerating and Britain announced the despatch of a Cabinet Mission in May 1946. Preparations were accordingly hurried.



In Jammu & Kashmir State, the National Conference-nominated popular Minister resigned from the cabinet, expressing dissent on issues of policy. The resignation was timed with the announcement of the Cabinet Mission to India. Sheikh Abdullah raised the basic issue of Dogra sovereignty and demanded that the ruler "Quit Kashmir" so that the people could by themselves decide their future. The Sheikh also sent a memorandum to the Cabinet Mission in Delhi, detailing the sale of Kashmir for Rs 75 lakhs (local) to Maharaja Gulab Singh, bemoaning how people had been treated like *chatt*, conferring no rights or privileges on them, and as such, the claim for freedom on the withdrawal of British power.

The Mission was of the opinion (Memo. of May 12-46) that the existing treaty rights of the States with paramount power, would cease to be enforced by Britain, and these would revert to the State ruler and not to the people, as the Viceroy clarified on May 16, 1946, in an address to the Chamber of Princes. The British Government declared on February 20th 1947, that independence would be granted to British India and the exact plan for the transfer of power was notified on June 3, 1947.

Sheikh Abdullah was arrested during the regime of R.C. Kak, a local Kashmiri Prime Minister, on May 20, 1946, for demanding 'responsible government' and prosecuted for inciting hatred against the Maharaja and disaffection for the government. This led to an uprising and many other leaders and workers of the National Conference were arrested. More left the State to support the agitation from outside, where it gained the sympathy of political parties and media.

The Sheikh's arrest and prosecution evoked a strong reaction and Pt. Nehru tried to visit Kashmir on June 18, 1947, to intervene, but he was not allowed entry, was arrested and detained for two days at the border. Nehru returned to Delhi as he was required for the crucial transfer of power negotiations. In the meantime, the dates announced by Britain were getting closer and closer.

On July 25, 1947, Lord Mountbatten, the Viceroy, explained at the Chamber of Princes, the details relating to the States (the plan envisaged covered creation of two dominions out of India — India



and Pakistan) and it was for the rulers or princes to accede to either dominion, before the transfer of power on August 15, 1947, keeping in mind the geographical contiguity of their States. Accession contemplated surrender to the dominion governments on the three subjects of defence, external affairs and communications, in terms of the Memo of May 16, 1947. A standard draft of Instrument of Accession was circulated to the Princes, who were advised that the signing of the instrument by the ruler and a formal acceptance of accession by the Governor General, would by law, confirm the act of accession conclusively.

Most rulers of native States in India were not in favour of democratically sharing power with the people and Jammu & Kashmir State was no exception. Maharaja Hari Singh<sup>2</sup>, at the time of his assumption of power in 1925, had declared "his desire to associate his people with the administration of the State".

Later, due to the impact of public agitation, the Indian national movement and the goading of the British government to support their favourites, a few minor steps to create a legislature with limited powers, was taken, following the Glancy Commission recommendations.

Interference in religious matters was prohibited and freedom of press and platform was granted. But the sovereign authority being vested in the ruler diluted the people's association with the administration, and, in general, the changes were more cosmetic than substantive. Responsible government, the demand of the people, was denied to them till the end of 1947.

After the second World War, the pressure of India's freedom struggle increased on the British and the States' Peoples' movement for democratic rights and institutions grew stronger. Coupled with the West's war objectives and aim of granting freedom to enslaved people and colonies, expectations rose high in the native States.

Yet surprisingly, the Indian princes did not deliberate hard upon the prospect of change, the release of political forces they would have to reckon with and plan, in anticipation, a programme of systematic constitutional development. Some princes assumed that freedom, democracy, self-rule etc, were mere political jargon for theoretical discussions, which the British would not concede.



Therefore, lulled into passivity, they did not prepare for future exigencies.

Some fumbled on the traditional path of sovereignty, authority and treaty relationship. Many were saddled with administrators who had no knowledge or political acumen for constitutional evolution, self-rule or principles of democratic governance. They were men of yore with no foresight into the future. They had little contact with ground realities and least visualised likely upheavals, domestic or regional.

Pt. Nehru was keen to return to Kashmir again, after the earlier fiasco, to help Sheikh Abdullah and the nationalist movement. Instead Mahatma Gandhi arrived in Srinagar on August 1, 1947, his only visit to the State. He met the Maharaja, the Prime Minister, and had discussions with them and other leaders about the situation. He accepted no hospitality from the State, expressed his disappointment with the situation and plainly told the Maharaja and the Prime Minister about their lack of popularity and support amongst the people. Gandhiji left Srinagar on August 3, 1947, and returned to Delhi. The services of the Prime Minister, R.C. Kak were terminated on August 11, 1947, and he had an ignominious exit.

Maharaja Hari Singh did not exercise his right to accede either to India or Pakistan by the required date of August 15, 1947. He, therefore, technically speaking, became the independent ruler of J & K State from that date. He also did not join the Constituent Assembly of India set up under the Cabinet Mission plan of December 1946. However, there were three options open to him, as explained in his letter of October 26, 1947, to Lord Mountbatten. It appears that he was not in favour of acceding to, or merging the Hindu State of Jammu & Kashmir with a secular democratic India, as desired by some Hindu organisations of the State. Many supporters, who favoured the State's accession to India, were accused of being traitors and some were arrested for their views.

The ruler's second option was acceding to Pakistan. Jinnah had assured him of his legal competence to do so and Khurshid, his secretary, who was in Kashmir then for discussion, assured the ruler that "Pakistan would not touch a hair of his head or take away



an iota of his power, if he were to declare the autonomy of the State and accede to Pakistan". The Jammu & Kashmir Muslim Conference passed a supportive resolution. But, in view of his experience since 1925 in the Valley, the ruler did not feel assured.

The third option, that is, independence, though technically available, could be useful only if it could be assured by both India and Pakistan. There was no guarantee for that, as the paramount power was withdrawing and could not have helped.

The ruler was thus confronted with a dilemma and he was unable to take a decision as to the best course available to him. He therefore, could not meet the deadline and held on to his options beyond the limit, which complicated the situation.

In the changing circumstances, the National Conference, which had launched a 'Quit Kashmir' campaign and whose leaders and workers were imprisoned, could not give vigorous support to the movement and directed its energies to consolidate its rank and file. Sheikh Abdullah was released on September 29, 1947, and gave a clarion call for "freedom before accession", without much ado, in order to gain power.

While the Maharaja continued to sit on the fence, Mountbatten tried to persuade him to accede by August 15, 1947. Had he acceded to India before that date, Pakistan could not have objected to it, as it had not been constitutionally born till then and no complications could have arisen.

When Mountbatten went to Kashmir to press the ruler to take a decision, he conveyed to him an indication from Sardar Patel that even "if the ruler had acceded to Pakistan, his decision would have been accepted by India". This was also confirmed by Mountbatten on his return to India. However, the ruler was flirting with the idea of independence, and probably hoped to triumph by delay. On August 12, 1947, instead of accession, he sent two identical

\* (Quoted from Mission with Mountbatten by Alan Campbell Johnson - Pages 120 and 240. (Published London, 1952, also quoted other in books). It seems as if the Sardar may have considered forsaking the Valley and retaining Jammu and Ladakh regions, if necessary.



telegrams to India and Pakistan, asking for a standstill agreement on existing transit arrangements for services and facilities. Pakistan agreed, on August 15, 1947, with the ruler to continue the arrangement. India asked for negotiation, which never followed and services to the State were continued by India.

In the meantime, the communal situation was worsening in the north and violence was intensifying in the Punjab. Pt. Nehru apprehended trouble from Pakistan in Kashmir during the winter months of isolation and wrote to Sardar Patel to intervene with the Maharaja and advise him that the only course open to him was to seek the cooperation of the National Conference and accede to India without further delay. That would make it difficult for Pakistan to invade the State, officially or unofficially, without coming into conflict with the Indian Union". If this advice had been accepted by the ruler, there would have been no so-called Kashmir problem. Unfortunately, the ruler was not moved and a decision evaded him even then.

Simultaneously, other worrisome developments were taking place. News of assembly of man and material and infiltration of armed men from the Punjab was received in the State and a tense atmosphere was created. Pakistan Radio, press and politicians were inciting the Muslims of Kashmir to rise against the Hindu ruler. Rebellion by returned army men on leave in Poonch was widely publicised. Transit supplies, services and utilities, including food, salt, kerosene, petrol for Kashmir were stopped, effecting an economic blockade of the State by Pakistan. Feverish preparations for an armed invasion on a large scale from the Punjab & NWFP were reported. The political, social and economic atmosphere was surcharged and warlike conditions were being created in the areas adjacent to Kashmir, causing a disquieting alarm amongst the people and the administration.

Sheikh Abdullah had been released from jail on September 29, 1947, and in the changed circumstances, he took immediate charge of his organisation and set up a national militia, calling for readiness to face the situation with courage and unity. The State administration had broken down, there was chaos all around and no



authority was in command. It was only the rank and file of the National Conference who regulated traffic on the roads and the Sheikh exhorted the people to remain calm, united, careful and defend their hearths and homes. He declared that politically his priority was a responsible government and other steps like 'accession' would come later. However, his urgent and overriding duty was for the safety and security of the people of the State.

On October 12, 1947, two telegrams were received from the Pakistan foreign secretary addressed to the Prime Minister of Kashmir, complaining about the State army action taken in and bordering Sialkot. It was denied by the State Government on October 18, 1947, and a telegram was sent by the State Prime Minister to the Governor General of Pakistan, charging Pakistan with breach of the standstill agreement and other outrages against the State. These complaints were denied by Jinnah on October 20, 1947. On the same day, news about a column of several thousand tribesmen and irregulars, fully-armed with light and heavy weapons, invading the State from Pakistan territory, caused widespread alarm. The advancing forces indulged in murder, rape, loot en route, and by October 24, 1947, they were moving towards Srinagar, the capital, which was in peril despite heroic defence by the meagre forces of the State. Had the invaders not delayed themselves in Baramulla, they would, by October 25, 1947, have been at the gates of Srinagar city.

The safety of the people, their lives, honour and properties were seriously endangered and the fear of invasion overcame the populace. As a last resort, the ruler approached the Government of India for military help for the State's defence, while he himself left Srinagar for Jammu for safety on October 25, 1947. The Government of India regretted that in the absence of any agreement between them and Jammu & Kashmir State, the Indian army could not be deployed there to defend the State. The Maharaja then decided to accede to India on October 26, 1947, and signed the standard Instrument of Accession, covering three subjects. The Governor General of India accepted the accession on October 27, 1947.



With the responsibility for Jammu & Kashmir State's defence thus devolving upon India, Indian air and ground forces were rushed to the State and fought the invaders. In due course, the advance of the marauders was stopped and they were thrown back. The capital and other towns and villages were saved.

Though Sheikh Abdullah and the National Conference were keen for 'responsible government' as a first step, the invasion from Pakistan precipitated the decision for the accession of the State. While supporting this decision, the Sheikh, the leader of the largest political party in Jammu & Kashmir, (with an overwhelming Muslim membership) declared as follows on October 28, 1947:

"... their raiders created havoc and looted Muzaffarabad and other places. They marched towards Srinagar. It was obvious that this invasion was meant to coerce and compel the people of Kashmir to act in a particular way, namely to accede to Pakistan. Every Kashmiri was shocked by the raid. Every Kashmiri resented the compulsion on his will. I came to Delhi for a few hours to consult my colleagues and to explain the present critical position in Kashmir to the Government of India. I asked them, on behalf of the people, for help in resisting the brutal raids. I am now going back to my people in Kashmir to stand shoulder to shoulder with them in defending our heritage and our homeland. and to share with them the perils and sorrows that may be in store."

Sheikh Abdullah added that "... the invaders, who came in the name of Pakistan, to make us believe that they were true servants of Islam, scorched our land, ruined our homes, despoiled the honour of our women and devastated hundreds of our villages. These lovers of Pakistan, dishonoured even the Holy Koran and desecrated our mosques, which they turned into brothels to satisfy their animal lust with abducted women..."

While writing to Lord Mountbatten and acceding to India on October 26, 1947, the Maharaja had mentioned that it was his intention to set up an interim Government at once, to ask Sheikh Abdullah to carry out the responsibilities in the Emergency with the Prime Minister. The Sheikh was appointed as the Head of Emergency Administration on October 28, 1947, and he



immediately started organising popular civil defence, reviving the defunct administration and normalising living conditions in towns and villages. He had the fullest support of the people and the National Conference and, in turn, associated the people with the administration.

The activities of the Emergency Administration covered all the facets of governance and citizens' lives with a people's approach to their problems. The response from the populace was most heartening. While there was bitterness against Pakistan's invasion and their acts of murder, loot, rape and economic blockade, the people felt outraged by Pakistan's non-recognition of Kashmir's accession to India and expressed their firm determination to defend themselves. They also thanked India for the timely help.

With the accession to India, Kashmir's problems relating to defence and external affairs became the responsibility of the Government of India and the latter dealt with Pakistan. Owing to non-compliance by Pakistan of India's demand of ceasing and desisting from invasion, India not only had to fight a defensive war but had to complain against Pakistan to the U.N. Security Council.

While the Jammu & Kashmir State had acceded to India (on three subjects), the Maharaja had reserved for himself sovereignty in and over the State and the overall power, authority and rights enjoyed by him as a ruler, as well as in respect of validity of any law in force, as reflected in the Instruments of Accession..

The State continued to be administered under the Jammu and Kashmir Constitution Act of 1939 and Sheikh Abdullah's appointment was made under it. The Emergency Administration proved popular and the people increasingly demanded its replacement by a 'responsible government' and the right to frame their own constitution.

The Maharaja came under greater pressure from the people and the nationalist parties in Delhi to democratise the administration. Eventually, on March 5, 1948, he issued a Royal Proclamation to replace the Emergency Administration by a popular interim government, defining its powers, duties and functions (pending the framing of a fully democratic constitution), with the executive



responsible to the legislature, and appointed Sheikh Abdullah as Prime Minister with effect from March 1, 1948. The Sheikh's powers were the same as granted to other Prime Ministers, with the same degree of autonomy.

The proclamation spelt out and included conditions such as joint cabinet responsibility, the appointment of a *dewan* by the ruler as a cabinet member; assuring people of equal opportunities of service, in civil and military jobs, solely on the basis of merit, irrespective of creed and community; convening of a National Assembly based on adult franchise, and the framing of a Constitution with safeguards for the minorities and freedom of speech and press, on restoration of normalcy. The Maharaja's proclamation laid the foundation of a responsible government in Jammu & Kashmir. For himself, the Maharaja sought to acquire the status of a future constitutional Head of the State.

With the Sheikh in the saddle, political forces — domestic, regional and international — interacted to make the Ruler uneasy, and by another proclamation dated June 20, 1949, he decided unhappily, on grounds of ill-health, to leave the state, temporarily vesting all his powers and authority — legislative, executive and judicial — in Yuvraj Karan Singh (his son) during his absence. This declaration was tantamount to his abdication, for he never returned to the State and he died in Bombay in April 1961.

On November 25, 1949, Karan Singh, as Head of State, proclaimed and directed that the Constitution of India<sup>2</sup> would govern the constitutional relationship between India and the State and provisions of the Jammu & Kashmir Constitution Act, 1939, inconsistent with the Indian Constitution, would be superseded and abrogated. This arrangement took into account the impact of accession. Meanwhile, the United Nations continued deliberations on India's complaint against Pakistan. To update the relations between India and Jammu & Kashmir, the Jammu & Kashmir Constitution Act, 1939, was subjected to many amendments.

The Indian Constituent Assembly was going ahead with its work in 1949, and was expected to complete a draft for a new Constitution of India by year-end. Though many of the native



States had joined the Constituent Assembly, they initially visualised that they would have a separate constitution for internal administration. However, this was opposed because such a set-up had no place in a democracy.

A meeting was held with the rulers, and, it was agreed by them that the Constitution of India would contain within it a Constitution for the States and an instrument was devised and signed to make the New India Constitution applicable to the States<sup>3</sup>.

Kashmir had nominated four representatives to the Indian Constituent Assembly in June 1949. They made it clear that Kashmir's association with India would be only on the terms of the Instrument of Accession, where under clause (7) the ruler did not bind himself to "acceptance of any future Constitution of India or to fetter my discretion to enter into arrangement with the Government of India, under any such constitution".

Kashmir relied only on the Jammu & Kashmir Constitution Act of 1939 and did not agree to be governed by the new Constitution of India.

As all states, except Jammu and Kashmir, were committed, as stated above, to accepting the new constitution, necessary provisions were made for their integrated status as full-fledged constituent units of the Union and special arrangements had to be devised for Jammu & Kashmir's association with India.

The Government of India gave three reasons for the special treatment of Jammu & Kashmir State (i) continuing war (ii) Government of India's commitment that an opportunity would be given to the people, and (iii) Jammu & Kashmir State was not yet ready for integration like the other States.

It was further clarified by Jammu and Kashmir that "it was for a Constituent Assembly of the State to frame a new Constitution for the state and that any provision that may be made in the Constitution of India regarding Kashmir, the basis should be the Instrument of Accession, and till the Constituent Assembly of the State consented to accede on any other subject to the Union, the relationship between India and the State should be limited to the subjects specified in the Instrument of Accession."



Accordingly, Draft Article 306A (presently Article 370) was adopted in the draft Constitution, as an interim arrangement and the future relations between the two would be based on this article, headed as *Temporary and Transitional provisions*.

The Constitution of India, declaring India as a Republic, came into force on June 26 1950. The *ab-initio* imposition of limitation on other matters beyond the three subjects, by the Maharaja, and his inability to sign the supplementary instrument and the insistence by his successors, as the ruling powers then in Jammu & Kashmir, of not agreeing to the adoption of the new Constitution of India for Kashmir, laid the foundation for the creation of a citadel of autonomy in the State.

However, in these circumstances, Article 370 as drafted, became effective, with the consent and concurrence of the Jammu & Kashmir Government. This Article, in the words of Sardar Patel, was a device to continue the existing relationship of the Jammu & Kashmir State with the Union of India.

In accordance with para (i and ii) of Article 370, the President of India issued a Constitution (Applicable to Jammu & Kashmir) Order, effective January 26, 1950, with the full support of Sheikh Abdullah and his government. This order elaborated the subjects acceded to and included two schedules; the first, incorporating the laws for the State, limited to matters stipulated in the schedule, and the second, tabulated the provisions of the Indian Constitution, in Addition to Articles 1 and 370, which were to apply to the Jammu & Kashmir State, as amended.

Following the objective of State autonomy, the Jammu & Kashmir National Conference passed by a unanimous resolution on October 27, 1950, for convening of a Jammu & Kashmir Constituent Assembly for framing of a State Constitution and to finalise its future association with India. The ruler issued a fresh proclamation on May 1, 1951, for convoking a Constituent Assembly, with the following objectives:

1. Framing a Constitution for Jammu and Kashmir State.
2. Setting up of a Delimitation Commission for creating constituencies with a population of 40,000 people each.



3. Election to be on the basis of adult suffrage, direct and secret ballot for the Constituent Assembly.
4. Make its own rules of procedure and conduct.

The first meeting of the elected Constituent Assembly took place on October 31, 1951. Sheikh Abdullah<sup>4</sup> inaugurated the Assembly on November 5, 1951, and gave a stirring call to the members in the following words.<sup>4</sup>

“After centuries we have reached the harbour of our freedom, a freedom which for the first time in history, will enable the people of Jammu & Kashmir, whose duly elected representatives are gathered here, to shape the future of their country after wise deliberation, and mould their future organs of Government...”

Sheikh Sahib called it “a day of destiny... a day which comes only once in the lifetime of a nation”, and advised members that whatever they decided “had the irrevocable force of law”. He called it a sovereign assembly. The address, an important and memorable document, is reproduced in full as Appendix III. It gives a clear picture of his basic thinking, taking into account the balancing of advantages and disadvantages of secular and democratic principles that should apply to their deliberations and decisions, then, and for future governance and relationship.

There was no hint of de-accession or dilution of the existing state of relations with India. “We have no intention to cede away... our accession to India is complete”, said Sheikh Abdullah. The Sheikh outlined four main objectives and functions for the Constituent Assembly:

- i. Framing of a future Constitution for the State
- ii. Decision on the future of the Dogra dynasty
- iii. Whether compensation should be paid for lands and estates taken over
- iv. Conclusion regarding accession by Jammu & Kashmir State and future relationship with India

Four relevant committees were created to decide the above issues brought before the Assembly. The Land Compensation Committee recommended nonpayment of compensation to the landlords for the expropriated land. The



Basic Principles Committee recommended a fully democratic set-up, abolishing hereditary rulership and replaced it by an elected *Sadar-i-Riyasat* (as Head of State), and a5, a State flag for the State.

Recommendations<sup>5</sup> on the other two issues were delayed. To ensure that there was no hitch in regard to these matters, it was felt expedient to arrive at an understanding between the State and Indian leadership, so that agreed solutions were arrived at and implemented without delay.

Two delegations from the Government of India and Jammu & Kashmir State met and arrived at a mutually agreed solution of various issues, which come to be known as the Delhi Agreement of 1952. It is a landmark in the evolution of India and Jammu & Kashmir State's constitutional relationship.

Sheikh Abdullah, in this context stressed that "we, as well as our friends from India, wished to strengthen and smoothen our relations. They never wished that Kashmir should drift away from India and we never wished to sever our relations with India. Both the parties wished that the ties binding us should become stronger and lasting..." (19.8.1952).

The Delhi Agreement was approved by the Union Parliament on August 7, 1952. The Jammu & Kashmir Constituent Assembly adopted a motion of approach, on August 21, 1952. Sheikh Abdullah reiterated its terms in these words. "Our government was to secure a position for the state which could be consistent with the requirement of maximum autonomy for the local organs of the state power, which are the ultimate source of authority in the state, while discharging obligations as a unit of the federation".

It was obvious that the Jammu & Kashmir State would enjoy a special position within the Indian Union. In view of repeated reference to this agreement, its key terms are noted below:

- (1) The accession of Jammu & Kashmir to India was reiterated on the original terms and conditions.
- (2) Article 370 would remain in force.
- (3) Residuary powers beyond the three acceded subjects would remain vested in Jammu & Kashmir.



- (4) Persons domiciled in Jammu & Kashmir State would also be granted Indian citizenship, without it affecting their State-subject rights.
- (5) Hereditary rulership in Jammu & Kashmir would be abolished and a *Sadar-i-Riyasat* elected, subject to his recognition by the President of India, and who would command respect in the State.
- (6) The Jammu & Kashmir State flag would be additional to the Indian flag, which would follow the framing of the Jammu and Kashmir Constitution.
- (7) As for fundamental rights, on principle, it was agreed that citizens of Jammu & Kashmir should have these rights, but a final decision would follow the framing of the Jammu and Kashmir Constitution.
- (8) The Supreme Court would have appellate jurisdiction.
- (9) In the case of emergencies, the President would have full powers in respect of external emergency, but in regard to internal disturbances, a proclamation and subsequent action would be at the request or with the concurrence of the Jammu & Kashmir State.

The background and terms of the Delhi Agreement of 1952 acquired an important position in the autonomous framework of J & K State. It is reproduced in Appendix IV.



**Notes**

1. Autonomy has diverse implications which must be taken into account in formulating opinions and coming to political and constitutional decisions. Encyclopedia Britannica, Vol 2, Page 789.
2. For a study of the historical evolution of the constitutional status of J&K State, reference is invited to Justice A.S. Anand's book on the Constitution of J&K; also the impact of Kashmir's constitutional position on the Indian Constitution, in matters relating to the state, must be examined, as per Appendix 5.
3. The political and personal viewpoint, as reflected in Sheikh Abdullah's autobiography, helps to grasp the objectives and policies from the pen of the leader.
4. The objectives, as outlined in the inaugural address of December 5, 1951 to the Constituent Assembly, must be borne in mind as a working guideline in regard to the achievements. The objectives of fullest autonomy (para 5) and equitable and fair distribution of power, privileges and facilities (para 8) for all areas, were mandated for the new Constitution.
5. Quick decisions came on some issues, while other important matters were delayed. On "Quit Kashmir", Sheikh Abdullah by a telegram and memorandum advised the Cabinet Mission on March 23, 1946, seeking independence for the Jammu & Kashmir State. The National Conference was a member of the All-India State's Peoples' Conference since 1941, and the Sheikh became the President in 1946.
6. J&K State did not join the Indian Constituent Assembly, as the ruler did not favour accession to India then, and some Hindu organisations like the All J&K Rajya Hindu Sabha, Jammu (the forerunner of today's BJP), did not either. The Kashmiri Muslims showed favourable interest in Indian accession. Refer to Balraj Puri's *Kashmir Towards Insurgency* (Orient Longmans - 1975 - Page 15). In fact, many nationalist leaders favouring India were arrested and newspapers supporting them banned.



## Chapter 8

### *Autonomy or Deaccession (II)*

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The issue of the final relations of Jammu & Kashmir State with the Union of India had been referred in May 1951 to the Basic Principles Committee of the Jammu & Kashmir Constituent Assembly and it was kept pending there, without much progress. The implementation of the 1952 agreement was getting delayed and suspicions arose about the real intent of the Jammu & Kashmir Government. It appeared as if Sheikh Sahib<sup>1</sup> was having second thoughts and seemed to be hedging even though he had recommended earlier "that Assembly may agree to continue the relationship on the present basis or extend its scope, as it might like to consider feasible or proper... the accession was final and complete".

The National Conference leadership was concerned on the issue of delay of nearly a year and it led to a rift in the Cabinet, especially when the Sheikh gave expression to options like secession and independent status.

It was strongly rumoured that diplomats of a foreign power had influenced Sheikh Sahib to seek independence for Kashmir, to be guaranteed by other powers. He was accused by his cabinet colleagues and by others of intending to create a sultanate for himself in Kashmir.

A piquant situation, fraught with the breakdown of the administrative machinery and that of law and order, developed in the State. Three members of Cabinet sent a memorandum to Prime Minister Abdullah, making serious allegations against him and holding him responsible for the collapse of the government.



The Head of State, taking cognisance of the situation which was creating confusion and apprehension, decided that the cabinet could not continue to remain in office any longer and, therefore, dissolved the Council of Ministers headed by the Sheikh and on August 8, 1953, dismissed the Prime Minister of the Jammu & Kashmir State.<sup>2</sup> To avoid a political and administrative vacuum, he appointed the Deputy Prime Minister (Bakshi Ghulam Mohd.) to form a new cabinet the same day. And to prevent an outbreak of violence and to maintain law and order, the Sheikh was arrested on August 9, 1953, and detained at Gulmarg (Kashmir).

A convention of the ruling party was held on September 13, 1953, which approved the change of government and expressed complete confidence in the new cabinet and its policies. The Jammu & Kashmir Legislative Assembly, on October 5, 1953, unanimously passed a vote of confidence in the new government.

With the settling down of Ghulam Mohd. Bakshi in the saddle, the administration was toned up and quick decisions were taken by the cabinet, with an enthusiasm and urgency unknown in the earlier government. There was no communal or sectarian trouble in the State and relief was felt over the end of political tension.

The basic Principles Committee of the Jammu & Kashmir Constituent Assembly recommended that the State should "continue to remain acceded to India" and this motion was moved in the Constituent Assembly by D. P. Dhar (Home Minister) on February 14, 1954, and adopted on February 15, 1940. It inter-alia decided, that in order to enable the Centre to discharge its responsibilities which devolve upon it under the Constitution, those provisions of the Constitution of India, which may be necessary for the purpose, should be made applicable to the State in an appropriate manner."

"While preserving the internal autonomy of the State, all obligations which flow from the fact of accession and also its elaboration, as contained in the Delhi Agreement, should find appropriate place in the Constitution. The Committee was of the opinion that it was high time that finality in this respect should be reached and the relationship of the State with the Union of India expressed in clear and precise terms."



On May 14, 1954, under Article 370, the President of India, issued the Constitution (Application to Jammu & Kashmir Co. Order 1954), incorporating the elements of the Delhi Agreement (1952) and the internal autonomy of Jammu & Kashmir, as outlined by these, was not interfered with or abridged, even as some powers of the Indian Parliament, in respect to Kashmir, were enlarged.

The Constitution Order 1954 sought to amend about 80 articles and schedules of the Indian Constitution, as applicable to Jammu & Kashmir State, making concurrence of the State necessary. As select examples, the name, area, or boundary of the State could not be changed under Article 3, nor amendment of laws applicable to the State became effective under Article 368, without concurrence from the State. These changes strengthened the State's autonomy as intended. The Jammu & Kashmir Constituent Assembly unanimously adopted the new Jammu & Kashmir Constitution on November 17, 1954, and it came into effect from January 26, 1957.

Here, it would be appropriate to summarise the basic features of the Constitution, in the context of autonomy. "The State of Jammu & Kashmir, is and shall be an integral part of the Union of India (Section 3). All residuary executive and legislative powers, other than those related to acceded subjects, are vested in Jammu & Kashmir State (Section 5). Rights of permanent residents of the State were protected (Section 6). Status of Indian citizenship and all other rights were assured to Jammu & Kashmir permanent residents in India (Section 10). It defined its own directive principles of State policy (part IV Section 11-25); all symbols of a special and autonomous status.

Sheikh Sahib's long and unfortunate incarceration, however, did not prevent the march of the political process in the State, and many progressive steps were taken by successive administrations, in accordance with basic principles and procedures agreed upon to strengthen its autonomy.

The Sheikh was first released from detention in 1958, and again arrested in the Kashmir conspiracy case and eventually released in 1964. This separation from power had naturally embittered him and his "transformation led him to recycle Pakistani



statements" on the relationship between Jammu & Kashmir and India. He, against his own earlier commitments and affirmations, and his better judgement, also questioned the validity of the accession, even though approved by the Constituent Assembly of Jammu & Kashmir. Its Speaker Ghulam Mohd. Sadiq, made a telling response to such statements thus: "If we now say that the Constituent Assembly was incompetent, then we have to bring back the Dogra monarchy into the State, and lands taken away from landlords would have to be given back to them. If the Constituent Assembly was competent about these acts, why was it not competent to ratify the decisions taken in 1947, about the State's accession to the Union."

Sheikh Sahib could produce no counter arguments to validly rebut Ghulam Mohd. Sadiq. In fact, after simmering down, the Sheikh started blowing hot and cold, and on April 11, 1964, he extolled the 1952 Delhi Agreement thus. "The goodwill and amity will result in the consolidation of freedom and democracy in our country. I may, however, emphasise that the supreme guarantee of our relationship with India, is the identity of the democratic, secular aspirations which guided the people of India and those of Jammu & Kashmir in their struggle for emancipation, and before which, all constitutional safeguards will take a secondary position".

Sheikh Sahib was a free man and was at liberty to speak his mind, even though many of his speeches were unclear and contradictory, leading to confusion. It also appeared that the Sheikh's policies and that of Pakistan were operating in tandem, the Sheikh demanding greater autonomy, perhaps to the point of deaccession, for an independent Kashmir, and Pakistan pressing for a plebiscite to acquire and absorb Kashmir<sup>4</sup>. He spoke, however, in favour of secularism in India, was against the two-nation theory, and expressed his strong belief "to live in peace and friendship with Pakistan" and thus, incidentally, to put an end to the question of Kashmir. He wanted to be taken seriously on this and wished to promote better understanding between India and Pakistan, for which purpose he proposed to visit Pakistan.



Pt. Nehru consented and the Sheikh, along with Mirza Afzal Beg left for Pakistan, early in May 1964. They met President Ayub and other Pakistani leaders, but in view of their different approach and objectives, there was no progress in the discussions. Pt. Nehru passed away on May 24, 1964, and Sheikh Abdullah cut short his visit and returned to India, a disappointed man because of his failure to reach an understanding.

President Ayub, however, accused him of being a mouthpiece of Pt. Nehru and “acting under the compulsion of circumstances”, and the President further added that “they left me in no doubt that their future was linked with Pakistan”.

With the death of Pt. Nehru (after a brief spell of Gulzari Lal Nanda), Lal Bahadur Shastri was elected Prime Minister of India. Meanwhile, indications came that Pakistan was preparing for war.

The plebiscite Front of Mirza Afzal Beg held a convention in July 1964, and passed a resolution, with the Sheikh’s blessing, appealing for peace and freedom, ending of repression on Kashmiris, and grant of self-determination to them. India was thus being pressurised for a solution to the Kashmir dispute, “a thin thread between war and peace in the region,” as described by Bhutto.

The Sheikh threatened violence if peaceful methods failed, and condemned the misrule. On November 19, 1964, he sent a memorandum to the State Prime Minister (Ghulam Mohd. Sadiq), demanding self-determination peacefully, failing which, “other means” would be used — moving away from his earlier professions of secularism, stability of India, peaceful methods and interests of minorities, etc. The Sheikh was on a warpath.

The period between 1953 and 1972 was of mixed consequences. The Sheikh’s personal involvement was nothing short of a tragedy and a colossal loss for Kashmir’s development, yet the establishment and strengthening of Kashmir’s economic, industrial and constitutional status during the period could not be ignored.

The period coincided with the deaths of Pt. Nehru and Lal Bahadur Shastri and the emergence of Indira Gandhi, as Prime



Minister. From the point of view of peace in the subcontinent, it saw the invasion of India and Kashmir by Pakistan in August 1965, its defeat, which culminated in the Tashkent Declaration<sup>5</sup> of January 10, 1966. The Declaration mentioned nothing in specific terms about Kashmir.<sup>5</sup>

Nearly six years later, followed the debacle of the loss of East Pakistan and the creation of Bangladesh, after the defeat and surrender of Pakistani forces to India in Dacca in 1971. India and Pakistan, after mutual discussions, entered into the Simla Agreement in 1972, which was designed to settle the Kashmir problem.

Sheikh Sahib, in the meantime, perhaps sobered by the developments in Pakistan, remained vague and wavering, rather politically unsure, without a firm conviction for a possible solution. Sometimes his arguments related to satisfying three parties and at others, he was equivocating and faltering, at best.

On June 23, 1972, Sheikh Sahib, in an address at the Hazratbal mosque in Srinagar, declared: "Neither Pakistan nor any other power could help create an independent Kashmir. The only hope lay in greater autonomy within India itself."

Such statements and other indications were not lost on the authorities. While realisation had dawned and recognition had been given to the unbreakable nature of the Indo-Kashmir links by Sheikh Sahib, it was, however, felt that a fillip to a demand for extraordinary autonomy or deaccession might be a result of his latest thinking. The Jammu & Kashmir Commission of Inquiry 1968, had on the question of greater autonomy, reported as follows: "No such demand was made before the Commission directly by any party from Jammu and Ladakh. From amongst the parties from the Valley that appeared before the Commission, one or two brought up the subject."

The Commission further said, "it was reasonable to conclude that the demand for a larger measure of autonomy for the State does not have the support of a substantial section of the population, even of the Valley, and has received little, if any, support from Jammu and Ladakh."



With the Simla Agreement to govern Indo-Pak relations in future, and to consolidate nationalist and secular forces and strengthen democratic elements in Kashmir, the risks involved were worth taking. Indira Gandhi deputed three independent persons, like D. P. Dhar, Mr. C. Parthasarthy (diplomat and academician) and General P.S. Bhagat, (much decorated soldier and well known to the parties), to explore possibilities and conduct discussions with Sheikh Sahib. In his letter of February 11, 1975, Sheikh Sahib<sup>6</sup>, interalia, wrote to Indira Gandhi:

“The accession of the State of Jammu & Kashmir to India is not a matter in issue. It has been my firm belief that the future of Jammu & Kashmir lies with India because of the common ideals that we share. I hope you will appreciate that the sole reason for my agreeing to cooperate at the political and government levels is to enable the State government to initiate measures for the well-being of the people of the State, which I have always considered as my sacred trust. It will be my constant endeavour to ensure that the State of Jammu & Kashmir continues to make its contribution to the sovereignty, integrity and progress of the nation”.

After lengthy and tedious negotiations of nearly two years, a full understanding was arrived at, and the Delhi Accord<sup>6</sup> was concluded with Sheikh Abdullah on February 24, 1975. Indira Gandhi, while presenting the accord to Parliament the same day, stated that the objective was “to remove any misunderstanding and to secure the active cooperation of all democratic, secular and progressive forces in the country”.

The Sheikh welcomed the accord as the “re-establishment of trust and confidence, and we believe we have established a solid foundation for mutual cooperation”.

Syed Mir Qasim, the then Chief Minister of Jammu & Kashmir, stepped down, and Sheikh Sahib assumed office the second time as Chief Minister, on March 5, 1975.

**\*Note :** Former Indian Planning Minister, Home Minister of J & K State, twice Indian Ambassador to Soviet Union, Chairman Policy Planning Committee, External Affairs, who played a pivotal role in negotiating the Indo-Soviet Friendship Treaty and matters leading to the emergence of Bangladesh.



The 1975 Accord not only covered the question of the past laws but included a via-media for future relationships and cooperation between India and Jammu & Kashmir. It would be pertinent to reproduce the basic terms of this Accord:

1. Jammu & Kashmir State, as a constituent unit of the Indian Union, shall, in its relations with the Union, continue to be governed by article 370 of the Indian Constitution.
2. Residuary powers of legislation (on other than acceded subjects) shall remain vested in the State, according to Sec. 5 of the Jammu & Kashmir Constitution. But Parliament shall continue to have the power to make laws relating to activities questioning or disrupting the sovereignty or territorial integrity of India, or secession of the territory of India, or causing insult to the Indian national flag, anthem, or the Constitution.
3. Any provisions of the Constitution of India, if applied to Jammu & Kashmir with adaptation/modification, could be repealed, altered, under Article 370 by the President, on merits individually.
4. With a view to assuring freedom, the Jammu & Kashmir State may have its own legislation on certain matters, in a manner suitable to the State. The State Government could review laws made by Parliament and extended after 1953, and the Centre to take appropriate steps under Article 254 of the Indian Constitution. In future, the same procedure would also apply, and the State Government shall be consulted in extending laws to the State.
5. No law made by Jammu & Kashmir Legislature in the Constitution of Jammu & Kashmir shall take effect unless assented to by the President, if relating to the appointment / functions of the Governor and certain provisions in regard to elections.
6. There was "no agreement" on the question of the change and nomenclature of the Governor and Chief Minister. "(It was considered a matter only of form and not of substance, as there was no real lowering of their status through the changes. Otherwise, equality and uniformity with other



States in India might be lost, with attendant repercussions).''

This Accord was of great political and constitutional significance to India, and the Jammu & Kashmir State arrived at it with mutual understanding and accommodation, paving the way for a harmonious and constructive relationship, covering both the past and establishing effective procedures for the future, while keeping the autonomy of the State well-protected.

The terms of this accord offered an appropriate means for review by Jammu & Kashmir State of any Indian legislation extended to the State after 1953, and the Delhi Agreement of 1952. It is understood that Sheikh Sahib (as Chief Minister from 1975 till his death on September 8, 1982) had the position examined through a Cabinet sub-committee and eventually did "not favour turning the clock back", with no formulation nor recommendation sent to the Centre, as required in the accord.

The two succeeding Chief Ministers (during 1982-1990) also did not seem to have made any recommendations seeking amendments or modifications for laws extended to the State since 1953, and presumably these laws did not violate the autonomy of the State. The option was open during these 15 years and it cannot be closed by the Centre even today, in the light of the solemn accord being in force, with the approval of the Indian Parliament.

However, it is assumed also, that Indian laws (relating to non-acceded subjects) extended to Jammu & Kashmir since 1953, according to laid down procedures, were approved by the Council of Ministers of the successive regimes of the State, and that the required consent, as envisaged under Article 370, was given and the same could not have been validly or reasonably withheld or capriciously denied.

In fact, the laws had been extended (rather than imposed), at the request of the State Government, and in the best interest of the people of the State. Through this mechanism, the existing autonomy of Jammu & Kashmir State was well and validly maintained.

Apart from the opportunity to review and repeal or amend laws extended to Jammu & Kashmir from 1953 onwards, the Delhi



Accord 1975, established firm and detailed procedures for extension for Indian laws to the State in the future, in line with Article 370 and (Sec. 5 of Jammu & Kashmir Constitution) and based on the principles of concurrence and consultation, thereby ensuring that Jammu & Kashmir's autonomy, and commitments made to that State, are not violated by unilateral extension of any law, resulting in better understanding, mutual cooperation and smoother Centre-State relations.

Under the accord, it is the duty of the State to review past enactments at the Council of Minister's level, and formulate recommendations for the Centre for amendment or repeal of any laws extended. It is not the responsibility, or within the competence of the secretariat, or advisers under Governor's or President's rule, to seek a review. However, it needs to be stressed that the State exercises an effective veto over extension of Indian exactments to Jammu & Kashmir State, in respect of its residuary powers and those relating to non-acceded subjects, and is thus able to reinforce its autonomous status affirmatively.

Another aspect of the demand for autonomy since 1953 must be considered in the context of the Accord of 1975. The 1953 demand implies the unilateral denunciation by Jammu & Kashmir of the Delhi Accord of 1975, which was satisfactorily concluded after three years of hard negotiation, and welcomed by the Sheikh as "re-establishing trust and confidence and forming a solid foundation for mutual cooperation." This accord received the approval of the Indian Parliament, the State Government, and its legislature.

To denounce or reject this accord amounts to breach of an agreement characterised by good faith, seriousness and sincerity, if not a commitment or legal obligation. Before disapproving or by-passing it, a fair trial needed to be given to the Accord, particularly its para 4. It should have been examined if any difficulty, in fact, had arisen in its operation, with a view to overcome problems mutually, rather than press for and politicise a demand for 1953 status.

It is important to note that any authorisation granted to the Centre since 1953 by the State, as might look to some as depriving



the State of autonomy, was in fact, supported by the concurrence procedures and supplemented by amendments to the Jammu & Kashmir Constitution and relevant laws, after due passage in the Jammu & Kashmir legislatures. It was not imposed on the state by the Government of India by a fiat.

It is, however, necessary to understand the implications of the existing constitutional status of Jammu & Kashmir State in relation to the Delhi Accord, clarify the position and come to a correct conclusion, based on facts. It is, at the same time, essential to inform and educate the general public and brief politicians and political parties on the true nature of autonomy in the State, in order to eliminate misunderstandings, ignorance and suspicions, so that the State can move fast on the path of peace and progress. It is also appropriate to harness the goodwill of educated, well-meaning and better informed people, both inside and outside the State, to lend support, calmly disseminate truth, oppose disinformation and to usher in amity, cooperation and prosperity in the State.

It is not fully realised that autonomy has other dimensions. Autonomy is not a one-way royal road of rights, privileges and laxity, but has its own obligations, responsibilities and compulsions. It even bears negative aspects, and that is why it cannot claim to be a limitless haven. Sadiq<sup>7</sup> had stressed that "greater autonomy does not necessarily mean greater political freedom, much less economic freedom". This was proved by the first term of Sheikh Sahib's office, when the State enjoyed substantial autonomy, but fundamental rights were denied to the people and were not even included in the 1953 Agreement. These rights came only in 1968.

It is said that greater autonomy sometimes conflicts with India's international obligations in external affairs with regard to international conventions and recommendations for the orderly development of the State.

Is the objection to extension of beneficent laws, only to espouse inefficiency, arbitrary acts of politicians and others, and absence of independent supervision? The supporters of greater autonomy have merely made demands, but not justified or established how damage to body politic, economic development, or other interests of the



people by any curbs in the autonomy of the State, through extension of Central laws, were caused.

If any extended legislation was found harmful to the interest of the Kashmiri people, why should its protagonists feel shy of listing and explaining the quantum and quality of damage caused to Jammu & Kashmir's autonomy? Let us, therefore, talk in terms of reason and not rhetoric. If such laws are really harmful for Kashmir, these may hurt other States also, and the converse may also be true. If they were not bad for others, why should Jammu & Kashmir reject them? For example, in 1975, there was no agreement on restoring the nomenclature of the Prime Minister and Sadar-i-Riyasat for Jammu & Kashmir. While it is conceded that anglicised names do not result in the lowering of the status or powers of these functionaries, yet objections continue on the basis of form and not substance. It is not realised that the designation of the State functionaries has brought them on par with those of other States in India, and not merely arrogating to them meaningless verbal importance.

Misuse of Article 356, or Section 92 of the Jammu & Kashmir Constitution is a usual complaint in cases of breakdown of the constitutional machinery and political parties have been generally critical of the governor's role in dismissing elected governments. Yet, it is worthwhile recalling that when the holy relic was stolen from Hazratbal, the Action Committee's unanimous demand was for suspension of the Jammu & Kashmir Government and imposition of President's rule. On the other occasions, when section 92 was applied, did it adversely affect the rights of the Kashmiris, or impinge on the populational proportion of different communities, or damage the basic or special rights and interests of permanent residents of Jammu & Kashmir, or arbitrarily limit the freedom of other socio-political activities of the people? If it was not so, why oppose any legal restrictions extended by the Centre since the 1953 agreement till 1975, unless these have adversely affected the rights of the people, or the authority of the Jammu & Kashmir State, under the Jammu & Kashmir Constitution.

The President's Constitution Order of 1954 expanded the powers and authority of Jammu & Kashmir State, by omission of



over 115 existing articles of the Indian Constitution, as not applicable to the State. Changes in 29 Articles of the Indian Constitution made concurrence of the Government of Jammu & Kashmir imperative, before extending Central laws, not only strengthening the State's autonomy, but overriding the powers of the Union (Appendix V).

In all federal constitutions, there is a tendency to assume more power in the interest of planned and orderly economic development, on a unified and coordinated basis, for the units of a federation, as in the USA and other countries. There are seldom advantages gained by being exclusive, insular and restrictive, and not freely following the mainstream, unless discriminated against, which Jammu & Kashmir State is not.

Blind opposition to beneficent steps, is, therefore, neither democratic nor good, in the larger interest of a State, especially when no interests of any community are likely to be damaged. It merely obstructs prosperity and progress. The only basis for fear would arise if the permanent residents' rights were attacked by loss of autonomy. This, the Centre has certainly not done and has no intention to do, under the Agreement, the Accord, and under the Jammu & Kashmir laws.

From time to time, political parties and State Governments have sometimes accused the governors of misusing powers or authority and complaints have been made about the functioning of Central organisations, like the Planning Commission and Financial Commission, in matters relating to sharing of tax revenues, to enable the latter to accelerate poverty alleviation and progress in the States. In January 1988, the Centre appointed the Sarkaria Commission to recommend steps for improving financial and other relations between the Centre and the States. An appropriate questionnaire was formulated and the States were invited to respond.

The Jammu & Kashmir State submitted its reply in June 1986. Though it is not possible to reproduce here all the comments, criticism and recommendations or the supporting reasons in full, a summary of important issues would help focus on the issues in a correct perspective.



**A. General Comments**

In its reply, Jammu & Kashmir State referred to its special status under Article 370, and the 1975 Delhi Accord, and cited two dismissals of government — in 1953 and in 1984 — by the Head of the State 'irregularly', without testing their majority on the floor of the legislature. It was felt that the 'explanation' in Article 370 (b) had not been correctly and strictly applied.

**B. Replies to Questions**

- (i) It reaffirmed that the State had to be judged in terms of autonomy, as extended by Article 370, consequent to the Instrument of Accession, under the President's Constitution Order, especially of 1954, with subsequent amendments to the Indian Constitution, as applicable to the State, together with Section 5 of the J & K Constitution, which divided legislative powers between the Centre and the State. This position was satisfactory as it re-established the special status of J & K State. As an example, it was stated that Article 356 (relating to the breakdown of the constitutional machinery in a State and the governor's misuse of its provisions) was not applicable to J & K State, governed by section 92 of the Jammu & Kashmir Constitution.
- (ii) The State's replies, inter-alia, recommended consideration of the following topics by the Sarkaria Commission: (a) The role and powers of governors (b) Financial relations between the Centre and States (c) Role of the Planning Commission, Finance Commission the and other Central authorities, in allocating funds to the States, and (d) Appointment/ working of the Election Commission and the appointment of Supreme Court Judges.
- (iii) In regard to (a) above, it recommended that no government should be dismissed without an opportunity to prove its majority on the floor of a house. As regards (b) Jammu & Kashmir, urged that in the interest of development and economic growth of the States, they should be allocated a higher share of financial resources and taxes and a few suggestion were made in this regard, without any reference



to its autonomy. Central assistance by loans and grants should be 90 per cent by grant and 10 per cent by loan. It requested that adequate funds be made available to enable the implementation of the *Naya Kashmir* programme, envisaged in sections 15-25 of the J & K Constitution. It did not suggest any change in the 'taxing tasks' of the Centre, as provided in the Constitution, and hoped that a mechanism to reduce inequalities would be adopted.

Regarding (c), while appreciative of the Planning Commission, it wanted simplification of procedures about implementation. In respect of (d) J & K wanted, that in view of heavy backlog and workload, the Supreme Court should mainly deal with constitutional matters. Elections in Jammu & Kashmir should come into the ambit of the Jammu & Kashmir Constitution and the local electoral laws.

(iv) *Miscellaneous suggestions:*

- (a) Set up an Inter-State Council under Article 263.
- (b) Give to States more authority over All-India services.
- (c) More broadcasting facilities for States.
- (d) In the first schedule of the Industrial Development and Regulation Act, define the expressions, "national importance" and "vital public interest" and eliminate some entries favouring the Centre.
- (e) Functioning of the national industrial and financial institutions have been positive and satisfactory.
- (f) Functioning of ICAR and *Nabard* in the development of agriculture in the country is laudable.
- (g) There is 'Minimal interference' by the Centre in education.
- (h) Guarantees under Articles 29 and 30 of the Indian Constitution (relating to minorities in Jammu & Kashmir) should continue, and
- (i) More Central schemes should be transferred to the States and there should be greater consultation and coordination between the Centre and the States.

A cursory examination of the replies to the Sarkaria Commission's questionnaire by J & K State shows that but for two dismissals of the government in 1953 and 1986, no substantive



complaint of violation of the State's autonomy had been registered; perhaps on the grounds that other States/ parties had similar grievances.

The dismissal of Kerala's first Communist Government and the wholesale sacking of nine Congress Governments by the first Janata Government at the Centre, and similar response by the Congress Party, when it returned to power, is well known. Even today, misuse of the governor's authority under Article 365 is criticised. The Supreme Court has already opined that majorities should be tested on the floors of the legislatures and that is a settled law now.

The Jammu & Kashmir State reiterated its autonomy and special status in reply to questions, and stated that various articles of the Indian Constitution did not apply to the State, and no curbs had been or could be placed on the State in regard to such matters. The State urged for more funds and wider financial powers, to enable it to undertake development programmes for the economic well-being and industrial progress of the people. This attitude was in line with similar demands by the other States, and Jammu & Kashmir would, in any case, benefit with other states, if the Sarkaria Commission made recommendations, uniformly and without discrimination, and the states adopted a policy of consensus.

Apparently the question of outraging the autonomy of the State by the Centre did not figure seriously in the response of J & K Government to the Sarkaria Commission.

In judging the architecture of autonomy in J & K State, it would be expedient and important to recapitulate its components and framework to formulate a correct and composite picture of its dimensions. For the sake of brevity and convenience, it would be appropriate to focus on the main elements of the provisions and commitments, rather than on details of circumstances and arguments. A systematic tabulation of highlights would enhance the usefulness of a sum-up:

1. The foundation of autonomy in Jammu & Kashmir State was laid in terms of the standard Instrument of Accession,



dated October 26, 1947, which acceded three subjects to India, and reserved the rest for the then Head of State, his heirs and successors. It also did not bind the State to be governed by the Indian Constitution. The exact concept, dimension and definition of autonomy were not laid down.

2. After the adoption of the Indian Constitution in 1951, Article 370 formalised the relationship of Jammu & Kashmir with the Union of India, and the following provisions fortified its autonomous status:
  - (i) The Indian Constitution affirmed that under Article 1, Jammu & Kashmir was part of the territory of India and under Article 2, the name, area and boundary of the state could not be changed without the consent of the State Government.
  - (ii) Under Article 370, the legislative authority of India, in respect of the three acceded subjects, would be exercised in consultation with the Government of the State, and Indian laws relating to other than acceded matters, could be extended only with the concurrence of the State Government. Amendments to the above categories of laws follow the same pattern of procedure.
  - (iii) Modification or abrogation of Article 370 could be done on the recommendation of the Jammu & Kashmir Constituent Assembly, under clause 1(2) and not until the Kashmir Government so desires.
  - (iv) The President of India could issue under Article 370, Constitution Orders (CO) from time to time, with the concurrence of the State government, in respect of non-acceded subjects.

In 1950, the Constitution Order 1950, covered Articles 1 and 370, and added two schedules, specifying laws applying to India and extended to Jammu & Kashmir State. No law made by the Indian Parliament, or amended under Article 368, could be applied to Jammu & Kashmir State, without the consent of the Government of that State.



3. While the Jammu & Kashmir Constituent Assembly was inaugurated in October 1951, its progress on the issue of relations with the Union of India was tardy. To expedite matters, the Delhi Agreement of 1952 was arrived at. This cleared the ground and further strengthened the autonomy of the State, through steps including a separate State flag and an elected *Sadar-i-Riyasat*, subject to the President's approval. Concurrence of the State government was made imperative for Indian enactments and thereby buttressed the State's autonomy.
4. After the changes in the Jammu & Kashmir Government on August 8, 1953, and several successive developments, the President issued, under Article 370, the Constitution Order 1954, as applicable to Jammu & Kashmir State, which also incorporated the understandings reached in 1952. This Order, resulted in substantial changes in the Indian Constitution, as applicable to Jammu & Kashmir State, and affected 115 articles (out of 394) with complete omission of 87 articles and amendments to 28 articles and schedules, imposing conditions of concurrence by the State for operation of the articles in relation to that state. Not only was autonomy restressed and reinforced, but increasingly, the authority of the State was enhanced, not only in comparison with other States, but it created an embargo against the Centre in the application of important provisions, overriding the Indian Constitution (Appendix-V covers details of amendments and omissions.)

Some glaring changes are, however, given below:

For ready reference regarding fundamental rights, Articles 3, 7, 16, 19, 35A (Protecting State-subject rights, 246, 248), (residuary power of the Parliament), 352 (Internal emergency (declaration), and Article 368 (Power of Parliament to amend Indian laws applicable to Jammu & Kashmir). These changes were appropriately incorporated in the Jammu & Kashmir Constitution adopted in 1957.



5. During the period 1954-1975, whatever Indian laws were extended to Jammu & Kashmir on non-acceded subjects, became effective only after strict observance of the relevant Constitutional procedures and with the concurrence of the State Government, and in the best interests of the State. None of these could legally have been imposed, in violation of the autonomy of the State, or by ignoring the restrictions clamped by its Government, if any.
6. In 1968, a State Commission of Inquiry came to the conclusion that there was no marked support for 'greater autonomy' from amongst the people, and political parties throughout the State, except from perhaps one, in parts of the Kashmir Valley.
7. In order to consolidate the democratic forces in India and the State, after long and tedious negotiation between Sheikh Abdullah and Prime Minister Indira Gandhi, the Delhi Accord was amicably signed on February 24, 1975, which restated the terms of past understandings and proposed a method for review of the Indian laws extended since 1953. (Appendix-VII reflects the terms of the Accord of 1975).
8. Sheikh Abdullah took over the Chief Ministership of Jammu & Kashmir State on March 5, 1975 for a second term. He set up a Cabinet Sub-committee to review past laws enforced since 1953, and came to a final decision that it was not expedient to turn the clock back. Therefore, no recommendation, as envisaged in para 4 of the Accord, was made to the Central Government for action under Article 254. Misgivings as to the dilution of the State's autonomy were, therefore, assumed to be without basis.

This Accord continued to be in force and it was duly presented to and adopted by the Parliament and the State legislature. The basis and opportunity for review of past laws continues to be in force and these are well-entrenched within the two Constitutions. This Accord is available and applicable for removing misunderstandings, reviewing past enactments, and following a well-established procedure for a smooth future relationship and



cooperation between the Centre and the State. This is the correct legal and constitutional position as it exists, which also indicates the fortifications that have been built, in course of time, around the edifice of autonomy in Jammu & Kashmir State.

It appears that the protagonists of greater autonomy have not cared to deeply study the actual constitutional status as it exists and its implications, nor realised that the autonomy of the State is fully-protected by a power of veto in the hands of the State Government. What greater autonomy could a State, reasonably and fairly claim, unless it is intended to reduce the relationship to a slender thread, capable of being torn asunder with the slightest pull? J & K State has a very special status in the Indian Union with a separate constitution and its own State flag. It has extraordinary and unbridled constitutional authority, compared with other States in India, and has the power and opportunity, while protecting its special interest, to live a life of self-respect, self-identity and self-government. How can the limited power and authority of the States and territories in Pakistan compare with the vested empowerment of Jammu & Kashmir State and arouse even limited interest in the Kashmiris for more powers, except through ignorance or folly? Thus, it is hoped that the Kashmiris will easily realise the true state of autonomy and avoid being pawns.

Autonomy is completely and inexorably tied to equality and democracy, which form the supreme goal of a polity and the satisfaction of all people and all parts of a State. It is the *summum bonum* of good governance. The overwhelming weightage received in the past by the Valley, which has operated to the disadvantage of the *Jammu* and *Ladakh* regions and minorities, has given rise to demands for regional autonomy or homeland and other forms of empowerment within a State or region which needs to be examined. Amicable solutions have to be devised to satisfy the aspirations of these people, as the benefits of State autonomy should cover all the people of the States equally, irrespective of caste, creed or religion, and geographical location. After all, a strong, progressive, prosperous and united whole is better than its smaller and weaker parts.



In many quarters, a strong feeling exists that Jammu & Kashmir has been treated with greater consideration and magnanimity than any other State in India, and has been extended aid and assistance out of proportion to its size, population, and economic needs. Many Central Laws have not been extended to it in relation to health, education, mines and industry, etc., and the Centre is not armed with relevant powers in regard to them. This differential treatment is not appreciated by the other States and is a source of misunderstanding, which is likely to weaken Centre - State relations and damage Kashmir people's interests.

The promoters and supporters of greater autonomy must precisely establish how the 1975 status erodes the Jammu & Kashmir State's internal autonomous position and how it adversely affects its special interests and character? It is imperative to arrive in concrete terms at the specific benefits to be achieved by the people of the State by further enhancing the quantum of autonomy, while differing from other States and ploughing a lonely furrow, with superior existent rights and privileges and disproportionately fewer obligations, perhaps at the cost of weakening the Union's relations with other States and territories.

Not only is it as essential for the Union to have equality amongst the States, all-strong and no weak links, there must prevail a sense of equality amongst the internal regions of a State as well. The demands from the Jammu and Ladakh regions of Jammu & Kashmir for ending the overwhelming domination by the Valley, politically and economically, with disproportionate powers, executive, legislative and administrative, in the Kashmir region, must objectively be examined for appropriate solutions to overcome unfairness, injustice and resentment. The State's minorities must have a fair deal and protection for their special requirements and progress under the laws.

It is heartening to see the Leh Autonomy Council in operation and it is essential to nurture the seedling to see it grow satisfactorily and bring joy and prosperity to the area.

The Jammu region has been bitterly complaining, supported by facts and figures, of the disproportionate inadequacy of political power, opportunities in State administration, and industrialisation.



They are distressed with lack of justice and sympathy from the Centre, the State and political parties. They believe that their claims have been testified to by State Commissions, led by Justices (Justice Gajindragadkar in 1969, Justice Sikri 1979, and Justice Wazir 1980), who made positive recommendations for improving the political, administrative and economic structure and rights of the region. Most regretfully, the concerned authorities have failed to implement the recommendations and carry out necessary action.

For those who might be interested in autonomy, to the point of deaccession, it would be useful to note that the accession of Jammu & Kashmir State to India was effected under a British law and was governed by the provisions of the India Independence Act, passed by the British Parliament on July 17, 1947. This Act, under its Section 7, affirmed the lapse of British suzerainty over the native Indian States and lapse of all agreements, treaties, etc., between the British crown and the Indian States. Further, an Indian State was deemed to have acceded to a Dominion, if the Governor-General had signified the acceptance of an Instrument of Accession, executed by the Ruler of a State." Jammu & Kashmir Ruler's accession dated October 26, 1947, and its acceptance by the Governor-General, on October 27, 1947, made it full and final. There could, therefore, be no revocation or abridgement of this process, and none was envisaged.

Accordingly, under Article 1 of the Indian Constitution and its Schedule I (serial no. 15), Jammu & Kashmir State has been included as Indian territory, as part and parcel of the Indian Union. The Jammu & Kashmir Constitution, in its Section 3, laid down that, "Jammu & Kashmir is and shall be an integral part of India". Under Section 147 of the Jammu & Kashmir Constitution, Section 3 cannot be amended or abrogated, and hence this link between India and Jammu & Kashmir State cannot be dissolved under the law.

As to the right of self-determination, suffice to say that it is a universally accepted principle that self-determination is not available or applicable to parts within a State, and it only relates to territories under an alien rule, caused by invasion or occupation, otherwise.



In this context, it is pertinent to add that cessation of Indian territory,<sup>8</sup> is neither authorised nor provided for under the provisions of both the Indian and the Jammu & Kashmir Constitutions. As such, there could not be any secession of Indian and Jammu & Kashmir territory, and the Jammu & Kashmir State could neither be thrown out of the Union of India, nor could the State opt out of the territory. Undoubtedly, similar restrictions apply in other countries and India's position is not unique. For example, in Switzerland, "The integrity of its territory is not negotiable"; USA is "an indestructible Union of indestructible States"; "France, as a republic is", "Indivisible, secular, democratic and social"; German Federalism binds the "country's external unity with its internal diversity"; and Australia is "one indissoluble federal Commonwealth". Similarly the integrity and unity of India is supreme and indivisible under its constitution and the law.

This chapter has covered the concept of autonomy, its ramifications, the foundations of Jammu & Kashmir's autonomy in 1947, its evolution and reinforcement, its framework and its constitutional safeguards, resulting in a powerful veto in the hands of the State Government (in the form of consultation and concurrence procedures), both in respect of the Constitutions of India and Jammu & Kashmir, through the right of review of past and future laws. The inevitable conclusion is that the Jammu & Kashmir State is empowered with the highest degree of autonomy amongst the Indian States, with a safety bulwork to protect its special interests and ensure that its autonomy is not violated.

On the so-called inroads into Kashmir's autonomy, it must be remembered that more than 25 enactments of the Indian Parliament had been consented to and extended to Jammu & Kashmir State by Sheikh Sahib's Government up to 1953. Later, other Indian laws were extended between 1953 and 1975, duly consented to and adopted by Jammu & Kashmir, and none of these acts were unilaterally imposed on the State. These enactments resulted in amendments of the Jammu & Kashmir Constitution or other State laws. They were duly brought forward and debated in the Jammu &



Kashmir legislature before adoption. These laws brought the State on par with other federating States, eliminating conflicts, discrimination of State laws and empowering the people with a fair, equal and just opportunity to administer the State.

However, despite these advantages, Jammu & Kashmir was given a special option in 1975 under the Indira Gandhi/ Sheikh Abdullah Accord, to review and, if necessary, recommend amendments which would be considered by the Centre under Article 254 of the Indian Constitution. But this option was not availed of by successive governments of Jammu & Kashmir State.

Specifically, people are surprised that enactments extending the jurisdiction of the Supreme Court, the authority to the Election Commission, for removal of doubts and disputes, while acting under the Jammu & Kashmir election laws or regulations promoting industries, simplifying labour laws, and opportunity of direct elections from Jammu & Kashmir to the Lok Sabha, or authorising the State High Court to issue writs under Article 226, could at all be considered violatory of the State's autonomy and declared as 'inroads', even though supportive of people's rights and opportunities.

The critics are equating true autonomy with autocracy and despotism. Why deny the benefits of the All-India Services and the reciprocal advantage to the State's youth, or why prevent the access of the State people to the Supreme Court, as the apex of Judiciary, and receive justice at the highest level, or how could even writs issued by Jammu & Kashmir High Court be considered as deprivation of autonomy?

In effect, what is opposed as 'inroads' are steps for empowering the people of the State with greater and assured rights and opportunities, which should be welcome.

Without its votaries having proved and demonstrated the need and importance of greater autonomy as a means for the amelioration of the condition of the people of the State, the demand appears to be politically motivated. If otherwise constitutionally feasible, economically viable and satisfying the essential internal needs of the three regions of the States in the long run and in real



terms, benefitting the people, then consideration of specific steps may be justifiable.

But if the demand for more autonomy is a mere short-term political slogan, used to fuel the fire of militancy, or as a palliative for the so-called alienation or damaged psyche of a few persons, then granting any additional autonomy would be uncalled for. Autonomy must be judged in the long-term interests of the people and for satisfying their needs, progress and aspirations at large, along with the rest of the Indians. The people's requirements of food, clothing, housing, employment and other needs have to be met. Even so, if people convincingly believe that the roots of alienation and disappointment lie, on the one hand, in outright corruption, dishonesty, nepotism, parochialism and jingoism, and on the other, the absence of clean, sympathetic and responsive policies and programmes, carried out by the non-people orientation of an administration, coupled with political and party indifference to the needs and problems of the citizens, then the situation could not and will not improve the long-term interests of the people at large, despite greater doses of autonomy. In fact, many people honestly believe that the ills of Jammu & Kashmir arise from an excess of autonomy rather than its deficiency. The approach to greater autonomy has, therefore, to be realistic, meaningful, and appropriate, in terms of its objectives and requirements, and not merely through rallying cries and loud slogans, influenced by priorities other than need, truth and justice.



Notes

1. Also refer to Sheikh Abdullah's inaugural address to the J & K Constituent Assembly (Appendix III) regarding accession.
2. The J & K Ruler's order August 8, 1953, interalia states as follows:  
"I have been forced to come to the conclusion that the present Cabinet cannot continue in office any longer and hence I regret to inform you that I have dissolved the Council of Ministers, headed by you... I hereby dismiss Sheikh Mohd. Abdullah from the Prime Ministership of the State of J & K, and consequently the Council of Ministers headed by him is dissolved forthwith."
3. G.M. Sadiq's statement quoted on Page 126 of *Kashmir Awakes* by B.L. Sharma.
4. In his statement published on March 22, 1968, G.M. Sadiq said: "Indo-Pakistan goodwill cannot be purchased at the cost of Kashmir."
5. Tashkent Declaration of January 10, 1966, in Appendix VI and Shimla Agreement of July 23, 1972, as Appendix VIII.
6. The Delhi Accord of 1975 is enclosed as Appendix III. The finality of Kashmir's accession to India was also reiterated in Sheikh Abdullah's letter of February 11, 1975, to Mrs Indira Gandhi. (Constitution of J & K by A.S. Anand, Page 11).
7. With reference to demand for greater autonomy, Sadiq's statements published on February 22, 1968, and March 24, 1968, quoted in Sharma's *Kashmir Awakes*.
8. There is no law in force in India or Kashmir, under their respective constitutions, authorising secession or breakaway of Indian territory or its parts.



## Chapter 9

### *The Pandit's Bane*

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By all accounts, the last upsurge of 1985-90 had both brutalised and victimised the hapless and defenceless minority of Kashmiri Pandits, living in distant and scattered villages in the Valley. They suffered loot, arson, destruction and desecration of religious places and other losses and indignities, without any provocation or retaliation whatsoever. An unofficial survey has shown that the condition of the community is pitiable. They lived under threat to life and property. Their women and children were scared. Their religious freedom was in peril; their religious places subject to overt and covert assault. Their economic future appeared dismal, and educational and technical opportunities shrank to almost zero. The employed Pandits have had to confront organised and virulent discrimination at every step. Their employment percentage in government services and State enterprises has shown an alarming drop. In effect, their position touched a nadir, worse than during the Sultans' times, despite democracy, freedom and socio-economic changes and the goodwill and brotherhood of many people in the Valley.

The Kashmiri Pandits needed relief and succour urgently, supported by positive steps to ensure safety and security for the future. The community, its sympathisers and the authorities need to formulate short-and long-term plans for their rehabilitation and stay in the Valley, in dignity, economic viability and safety. This brooked no delay.

Various causes, direct and circumstantial, are at the root of their unhappy situation. A long spell of low-calibre, corrupt and



biased administration, under-pampered and short-sighted leadership, in many respects perverse, has played havoc with the existing inefficient service-structure, obscurantist and crypto-national officialdom.

In addition, favouritism and corruption by ministers and other political functionaries gave a powerful fillip to unscrupulous elements who, on the one hand became time-servers and sycophants, and on the other, forged links with disloyal and narrow-minded persons to serve themselves and their political and religious overlords.

Steadily and surely, the core of the local administration distanced itself from counterparts in India, seeking inspiration from its special status, and the international ramifications of the so-called Kashmir question.

Politics in Kashmir degenerated to the streets, power-brokers proliferated, communalism and corruption thrived and the body-politic became crippled, into a partisan and depraved work-ethic. The manipulation of the simple and illiterate sections of the masses induced fanaticism and jingoism and fanned unfulfilled and impossible aspirations of the sultanate era of the distant past.

Traditions were denied, history ignored or rewritten, novel and perverse interpretations of lineage and customs were proffered. There was an unchecked break-down of all norms of decency, religious tolerance and love for the neighbour. Fanaticism ruled supreme and the gun dominated action. Undisguised communalism, supplanted national objectives and policies; thereby, fomented and caused to flourish the strident attitude of a force of occupation, in one's own land.

The growth of fundamentalism, under the cloak of religious freedom and the primacy of the *Shariat*, projected the ploy to carve out a strong theocratic State, with the active support and connivance of the neighbouring Islamic countries, aided by others, unfriendly to or inimical to India, financed by opium money, petrodollars and other foreign funds and stoked by imperialists and super-power interests. Other powerful forces, jealous of India and its dominant position in South Asia, dreamt of weakening,



encircling and dividing this unified and democratic country. The last riots in Kashmir are a sequence of this game and the hidden devil.

The *raison d'être* for the grant of autonomy to J & K State under Article 370, was to protect the special identity, interest and exclusive State subject rights of the people, held since before accession, and to ensure that there was no encroachment by better-off non-State subjects, Indians or others. The majority community in Kashmir during the last 40 years, not only had safeguarded itself, but had managed to extend by subterfuge, privileges to outside co-religionists and enhanced their socio-economic strength in the State.

In fact, the population growth of the majority community is one of the highest in India. Their property-holding has shot-up dramatically. Comparatively, the minority in Kashmir has dwindled to less than half its original strength. Discriminatory measures designed to reduce their educational, employment and economic opportunities, confirm their worst fears. The special privileges of the majority were not available to the minority, and through perverse interpretations and devious application of rules and regulations, minorities were denied their rights as well. Similarly, their property-holding fell, resulting in expropriation of lands and homes. With the prevailing rate of decline in their population, they faced a bleak future and extinction in Kashmir.

In the complex interplay of forces, the small Kashmiri Pandit community was and is wrongly equated with a symbol of opposition to the nefarious designs of the anti-national, unpatriotic and fundamentalist elements. The exit or extinction of this already depleted minority (in numbers, in economic and political influence), appears to their ill-wishers, a step in the direction of theocratising Kashmir, and the weakening of its already tenuous links with India. To them, it would be conquest from within (without a formal declaration of war and use of smuggled and accumulated arms and lethal equipment), which they believe, India could not withstand, nor international pressure permit. For such activists and believers, the goal was realistic and achievable.



The implications and significance of the happenings in Kashmir were either not known or realised in other parts of India. It is a pity that many so-called political pandits, vociferous theoreticians for autonomy, and human rights activists, well-meaning people, even some ruling party members and opposition politicians interested in power-play, oblivious of relevant national interest, shut their eyes to the stark happenings in Kashmir and the fall-out of the incendiary forces at work there. They wore myopic glasses and they saw no evil, heard no evil and spoke no evil.

To many, Kashmir was like any other State, and all problems there would vanish if an opposition government was installed, no matter how elected or led. They had no time or patience to study the impact of the various forces operating in the Valley and the exigency or possibility of Kashmir's *de facto* exit from the Indian Union was something they could not visualise.

The systematic pursuit of enlarging Article 370 authority into a religious and independent State, supported by conditions on the ground, in a sensitive part of the country, was for many too far-fetched or too Machiavellian to comprehend. The naivette and incredulity of such people was appalling.

The longer they ignored the writing on the wall and took a simplistic view of the situation in Kashmir, the worse it got resulting in severe disappointment and lamentation. In the bargain, the interests of the people and the nation was severely damaged.

What about the Kashmiri Pandits' future in Kashmir? Admittedly, this is no time to harp on the past and merely look backward. This is also no occasion for self-flagellation for past mistakes. Recriminations will lead them nowhere. Past indifference and disunity should strengthen their resolve to seek and create a better future for all in Kashmir, despite very heavy odds.

In these difficult and trying times, the community needs to forcibly demonstrate sagacity, farsightedness, recognition of realities, absolute unity and unselfish leadership, repeat, unselfish leadership. They need to introspect deeply and rekindle a spirit of selflessness, a community feeling, and revive shared social,



economic and political faith, which alone would protect their future.

Time is also opportune to discard decrepit and degenerate social customs and rites, practised in abysmal ignorance of true religious significance and traditions, and in utter disregard of eternal truths, so that the weaker sections of the community will be saved from social degradation and economic ruin. The conscience of its members must be aroused, to pursue social reforms, eliminate wanton waste and vulgar display from their way of life.

Have the Kashmiri Pandits reached the end of their endurance and existence? Is there no hope for them in Kashmir, to live a life of peace and honour? This question is often posed in the Valley. One hears voices of bitter anguish and prognostications of doom. The last upsurge has shaken them severely, and, many of them have come to believe that the only avenue open to them is migration from the land of their forefathers, not only to seek safety and dignity for themselves, but in the best interests of their children and grandchildren.

For many, the emotional bonds with the Valley are under great strain, and they feel pressed to snap all ties or at least to loosen them, to protect their future elsewhere. Still there are others who apprehend, that in the present environment, things might never get better for them and they should consider the possibility of establishing a safe haven for themselves outside, in spite of lack of means. To others, at the weakest end of the economic scale, the situation is one of consternation and helplessness, with a refugee status staring at them.

Despite the ground realities in the Valley, many Pandits pray for favourable developments and some are keen to take a chance to stick it out and not forsake their heritage, the land of their gods and their forefathers.

The pity, however, is that barring lip sympathy, and in private, tongue-in-cheek comments by politicians and officials, nothing visible, practical and realistic has been done to germinate confidence in the minds of this minority. No plans have been formulated at the political, administrative, or social levels to render immediate (or mediate help) to this small community — a deprived



and discriminated minority, living at the whim of a west-ward looking majority. Such inaction, locally and at the national level, is too poignant, especially when political and religious organisations did not fail to make public issues of even minor matters, relating to other peoples, communities and countries.

The political parties in Kashmir are singularly equivocal and display an orchestrated non-committal attitude, preferring to use the community, or its leaders for their party benefit, through subterfuge or surrogates. The majority religious parties show no concern. It was because of this situation that the Kashmiri Pandits are in despair.

Even the Hindus living in other parts of India have, in general, offered little sympathy and active support for their suffering brethren in Kashmir. Nor has the desecration and destruction of Hindu religious places evoked much concern. It is possible that the Pandits might have, to some extent, isolated themselves in the past from the wider Hindu fold and probably given a false impression of a separate and privileged community. Thus, religious bonds and fraternal relationships with other Hindus must have weakened. It is possibly because of this that onslaughts have been made with impunity on this small, helpless and isolated community in Kashmir.

The situation calls for an urgent review. The community cannot afford to remain isolated and must look forward with confidence and determination to the future with the active sympathy and support of every Indian. This minority cannot be allowed to be doomed. They have every right to assure themselves and their future generations, a bright future, in and outside Kashmir.

History reminds us that they have, over many epochs, faced waves of callous depredations, and survived. History, as is known, does not stand still, nor does life for that matter, and it has a knack of repeating itself. In the path and life of a community, as of a nation, peaks and valleys occur, and as long as there is the will to survive, hurdles will crumble. In retrospect, one recalls the despondence of many Christians, Anglo-Indians and even Muslims, who felt orphaned at the British withdrawal from India. Recapitulate the sufferings of the Harijans over centuries. What of



the Jews, who, "at times they were to ride as high as the stars. But at others they would sink as deep as the sand on the shore". The Kashmiri Pandit, though desolate, will keep on hoping and praying for peace, justice and brotherhood.

Often, it is said, economic, social and political rights, claims and interests of a small group of persons, like the Kashmiri Pandits, could be assessed and protected, in view of their minority status. It would, therefore, be appropriate to examine the suggestion in the light of national and international commitments and declarations relating to small groups which differ from a majority.

'Minorities' are groups held together by ties of common descent, language or religious faith, and feeling themselves different in these respects, from the majority of the inhabitants of a given political entity. On this consciousness of difference, the minority base certain political claims, either for equality with the majority, or for special treatment based upon the recognition of these differences, or for autonomy, or in the most extreme cases, separation. In most cases, minorities feel grieved by occupying an underprivileged position.' (*Hans Kahn in Encyclopedia Britannica*).

Historically, minorities have always existed, but only after the rise of democracy, have their problems received attention and they were provided protection for their race, language and religion, even as their oppression took different forms. Many wars precipitated in Europe, Middle East, etc., and International treaties sometimes covered declarations regarding minorities. The League of Nations recognised three spheres — language, religion and race — in which minorities could claim protection, in accordance with a designated procedure. The Permanent Court of International Justice only played a minor role, even so, they, in an advisory opinion, stated that "equality between members of the majority and the minority must be an effective genuine equality".

World War II saw many harsh assaults on minorities like on the Jews, Poles, Slovaks in Europe and others in Arabia, Asia and Africa. However, after return to peace, the United Nations Charter,<sup>(2)</sup> neither specifically defined a "minority", nor incorporated any provisions regarding their protection. Even the



U.N. Declaration of Human Rights,<sup>(3)</sup> failed to convey these rights. However, the International Covenant on Civil and Political Rights (1978),<sup>(4)</sup> of which India is a signatory, in its Article 27, while applying to persons in a minority, affirms as follows:

“In those States in which ethnic, religious and linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language.”

Under its Article 28, a Human Rights Committee, would be established, which shall be seized of a complaint and act under Articles 41-42, if necessary, through a Conciliation Committee. The implications of this Article 27, may be examined here, in the light of some extrinsic and intrinsic criteria. Extrinsically, or objectively, these include: (i) The group exists within a State's population, having stable, ethnic, religious, or linguistic characteristics, but differing from most of the population; (ii) This group is numerically inferior to the size of the population; (iii) Such a group does not have a position of dominance over the rest of the population; (iv) The minority group consists of a State's nationals.

Intrinsically or subjectively, the group must have demonstrated the will by their solidarity to preserve their special characteristics over time, directed towards preserving their culture, tradition, religion and language.

These groups have a well-founded fear of being prevented, for reasons of their race, religion and language, in their social and other relations between large and smaller groups. Therefore, they (a) seek protection for these distinguishing traits or attributes, and (b) claim equal and non-discriminatory treatment, in respect of the three characteristics. There might possibly be other smaller groups carrying other different traits, but their recognition or protection as a minority is not envisaged as of right. For Kashmiri Pandits, problems of race or of language are not of consequence, but what weighs with them heavily to the point of concern, is their religion and culture, which must be protected.

Under the Constitution of India (Part III),<sup>(5)</sup> fundamental rights are available to all Indian citizens, irrespective of their religion,



sex, language, race, majority or minority status and are enforceable according to the provisions stated therein. All persons are entitled to freedom of conscience and profession, practice and propagation of their religion, under Article 25. Any section of a population has the right to manage its own religious affairs (Article 26), and have no bar on promoting their religion (Article 27), while there is freedom to attend religious institutions, etc., under Article 28. These four Articles are the cornerstones of religious freedom in India. As regards protection of minority interests, Article 29 enables any section of the citizens residing in India or any part thereof, having a distinct language, script, or culture of its own, to have the right to conserve the same.

There is no definition of 'minority' as such in the Constitution, but obviously it relates to a group of persons having a distinctive language, script and culture and who are not in a majority. By comparison, with the International Covenant, referred to above, 'race' is out and culture is in — which is the totality of inherited ideas, beliefs and knowledge, which constitute the shared basis for social action, and thereby, widens the scope for protection. Though 'script' is made mention of, it is assumed that minority protection for language extends to cover the script as well.

The right of a minority to establish and administer their own educational institutions is included in Article 30 of the Indian Constitution, (6) and prevails like other fundamental rights. Under Article 32(1) and (2), remedies for enforcement of fundamental rights lie in approaching the Supreme Court for appropriate proceedings, and is an important and integral part of the basic structure of the Constitution. Directions are issued in the form of writs or other appropriate means, under Article 32, which has application in the J & K State also. Consequently, the Supreme Court can act, as also the J & K High Court, under Section 103 of the State Constitution. So, many options are open for minorities' protection.

In so far as the J & K Constitution<sup>(7)</sup> is concerned, there is no reference in its permissions to minority rights or guarantees for protection. However, in its Part IV, 'Directive Principles of State Policy' are included in Sections 13 to 25 inclusive, but



unfortunately under Section 12, and these are not enforceable by any Court. Section 25, thus, makes a pious wish for curbing communalism, fundamentalism etc., foster brotherhood and equality among all communities, under the aegis of a secular State; national and international rights for minorities.

However, the most serious damage to a minority arises from genocide. An international convention for the Protection and Punishment of the Crime of Genocide was adopted in December 1968. This protection originates from the "right of the people to physical existence". Article 2 of this Convention spells out what constitutes genocide and includes:

- (i) Killing members of the group; (ii) Causing serious bodily/mental harm to members; (iii) Deliberately inflicting conditions calculated to cause physical destruction of a group, in whole or in part; (iv) Imposing measures intending to prevent birth within a group; (v) Forcible transfer of the children of a group, acts "intended to destroy, in whole or in part, a national, ethnic, racial or religious group", constitutes an international crime.

It would be pertinent to add that the right to life is guaranteed for all Indian citizens, as a fundamental right under Article 21 of the India Constitution, and is enforceable. The Constitution also assures (under Article 14) all citizens equality before law and prohibits under Article 15, discrimination based on religion, race, etc.

For a minority, equality would comprise:

- (i) Equality regarding political and civil rights; (ii) Equal rights in acquiring, or performing public service, function, profession, or honour; (iii) Equality of access to public office; (iv) Equality of treatment in following their trade or profession; (v) Equality in use of language; and (vi) Equal opportunity for educational, cultural, social and religious organisation.

Article 26 of the International Covenant of Civil or Political Rights (1976) prohibits discrimination and guarantees to all persons equal and effective protection against discrimination on various grounds, including religion. The UNESCO Convention



Against Discrimination in Education, explains and includes any distinction, exclusion, limitation or preference based on race, colour, sex, language, religion, political, or other opinion, national or social origin, economic, or any condition, or birth, nullifying equality of treatment in education, by (a) denying education, (b) subjecting to inferior standards in education, and (c) resorting to a separate educational system or institution.

The two key terms of **equality** and **discrimination**, if applied in the light of the above explanations and discussions, would prove meaningful as guidelines for those seeking redress and enforcement of their rights.

As regards minority protection of religion, the Indian Constitution (Article 25) assures a citizen the right to profess, practice and promote his religion. Articles 29 and 30 cover his interests and religious institution, of which protection and rights can be enforced by reference to the Supreme Court and High courts (Article 32). Since the right to establish institutions for religious and charitable purposes, to manage religious affairs and to administer such propositions is a fundamental right, protection of religious places acquires a well-deserved and significant importance for minorities.

In conflicts, these external symbols often become targets of anger and fury and risk damage or destruction. These, as such, call for special protective action. Apart from the preservation of minority religious properties, a citizen's right to "freedom of worship" has also to be assured.

A Convention on the Elimination of Religious Intolerance (1962) lists guarantees against all forms of religious intolerance in regard to pilgrimage, journey for worship, worship and assembly, rites and ceremonies and other relevant activities, which have to be subject, however, to public order, safety, health or morals, and fundamental rights and freedoms. It is thus noted that religion, religious properties and institutions, and the rights to worship, are required to be protected in case of a minority, like other human rights and fundamental freedoms.

In this context, it would also be appropriate to refer to the Protection of Human Rights Act (1994)<sup>(8)</sup> the National Human



Rights Commission of India and the State Human Rights Commission. The objective of the Act is for better protection of human rights and for matters connected therewith, or incidental thereto. It extends to the whole of India and applies to J & K State, in items relating to the Union and concerned lists of the Seventh Schedule of the Indian Constitution.

Human rights are defined, as "the rights relating to life, liberty, equality and dignity of the individual, guaranteed by the Constitution, or embodied in the International Conventions, and enforceable by courts in India".

The National Commission under Section 12 shall inquire into complaints of violation of human rights, or abetments, including negligence-related thereto, by public servants — intervene in relevant proceedings before a Court, review safeguards for protection of human rights and factors that inhibit enjoyment of the rights, and to promote awareness of safeguards for these rights, including terrorism.

It is significant that the Commission is entitled to make recommendations for the effective implementation of treaties and other instruments on human rights, under Section 12 of the Act.

Under Section 36 of the Act, parallel proceedings in the National and State Commissions are barred. These Commissions shall not inquire into a matter after the expiry of one year of an act complained of. It would, therefore, be obvious that the National Commission provides an appropriate means for vindication of human rights in India by investigation, intervention and directives for protection, redressal of complaints, and offering of relief to the victims. Though the International Genocide Convention is not directly included in Article 2(1) F of the Protection of Human Rights Act, most Acts defined as genocide against groups or otherwise contextually related under Article 2 (1), would be taken notice of.

It is clear that constitutionally and by law, the State of India is made fully responsible for protecting the fundamental and human rights of all citizens, equally, irrespective of differences of religion, caste, creed, sex, or status. In addition, the Union has its dual obligation of upholding the designated special interests of a



minority — a smaller and weaker group of citizens, who by virtue of their numbers, are unable to do so themselves.

In this context, it would be useful to examine the demand for a 'homeland' in the Kashmir Valley by a section of the Kashmiri Pandit community. Owing to severe disappointment caused by the failure of the State and Central governments and political parties to appreciate, sympathise with and assist in overcoming the trauma of the upsurge of 1989, and in great suffering and losses since, resulting in forced migration and landing in refugee camps in large numbers, and the absence of effective policies, actions and programmes for relief and rehabilitation, the Kashmiri Pandits are confronted with abject helplessness, defencelessness and betrayal. Even so, a small but enthusiastic group of Pandit young men, after careful consideration, came to the conclusion that under the continuing conditions, safety and protection, life and liberty, freedom of employment and occupational opportunities, dignity and honour could only be assured to the Pandits, by securing a 'homeland' for them in Kashmir, where they could live without discrimination and persecution.

This envisages establishment of a "homeland for displaced Kashmiri Hindus in the Kashmir valley, geographically identified as an area north and east of River Jhelum", and to be designated as a Union Territory. It has been argued that the area would strengthen democracy, secularism, freedom from civic and political discrimination, and maintain a healthy interflow of culture, trade and commerce, in accordance with the Constitution. This idea has had a wider acceptance, after December 1991, but doubts as to its feasibility and viability have persisted.

The proposal must necessarily be subjected to careful analysis in all its implications. To accommodate and rehabilitate the displaced persons in safety, dignity and progressively provided for, would be a tough challenge and calls for tremendous effort, material resources and political will, even if fortitiously, constitutional provisions validate the possibility of such demarcation.



Considerations of demographic identity, geo-political factors, possible political arrangements, constituting relations with other areas and States, international involvement, security, protection and life-support capability, inclusiveness of self-sufficient and economic viability, and offering a quality of life reflected in sustainable employment, housing, education and health facilities and other infrastructure requirements, must realistically be assessed and be potentially available, before assuming feasibility of the proposal.

It is not expedient to say that "we desired the homeland to be a Union Territory and it is bound to be viable", as has been projected on the basis of a conjecture. A calm and a cool determination of all pros and cons is essential, and doubly, since it involves unfortunate migrants who have already suffered from homelessness, sickness, penury and death in wretched camps, coupled with indifferent official and unofficial administrations. Without prejudging the issue, it would seem that the dice are loaded against the success of such a 'homeland' project in the Valley.

It is interesting to reflect as to what the Kashmiri Pandit wants. He has appreciated the help and sympathy received from some of the members of the majority community, who followed age-old traditions of communal amity and good neighbourliness in Kashmir. For the guilty, he does not want a witch-hunt; he has sought no revenge. Nor does he ask for, or expect, protection by arms, or battalions of forces, individually or jointly. He only wants to live a life of safety and dignity, and to be assured that he is wanted there in the Valley, as part of the old and traditional mosaic of religious tolerance and friendship.

As is well known, the Kashmiri Pandit is not an adversary to good brotherhood, humanity and peace, and he is as keen as his majority counterpart, to clamour and fight for prosperity and progress for all, irrespective of religious or other differences. He is a born patriot and not a fifth columnist. He is ever conscious of his eternal obligations to Kashmir. His pride for his heritage and traditional values is above passing fads, and as such, his stakes are high. That is why he has sought no special privileges, no separation, nor isolation, but only a life of equality.



The Kashmiri Pandit expects to be assured of fundamental human rights, equally with other Kashmiris, nay all Indians, by State and community action. Their safety and security and that of their families must be guaranteed and is a basic necessity. With these come freedom from fear, religious persecution and freedom to share the poverty or prosperity of the State. However, certain confidence-building steps are essential to meet the current situation, exacerbated by terrorism and its aftermath. These measures would relate to religious, economic, social and legal difficulties and disabilities and must be viewed dispassionately.

On the religious front, effective steps need to be taken to ensure that desecration and destruction of minority religious places does not take place and district authorities bear personal responsibility for acts of barbarism. All minority religious places and properties must be clearly demarcated, compulsorily registered and special endowments created to protect them against encroachment, illicit transfer, mismanagement and damage.

It would be prudent to introduce and enforce a Hindu Religious Property law, on the lines of the Gurudwara Act, or the Muslim Aukaf Act, in Kashmir. No encroachment on, or transfer of religious property should be legally recognised, and prevention of any infringement, should be the personal responsibility of district officials, under the supervision of a minister, to hold special charge for minority affairs. These steps would avoid disputes and possibly communal breaches. Properties, occupied forcibly and illegally, should be vacated and handed over to minority owners. Houses, shops, farms destroyed, to be rebuilt, and claims satisfied without delay. As a measure to build confidence in the minority, duress and distress sale of immovable property in Kashmir should be declared invalid, unless a fair and reasonable market price is proved to be paid by the buyer. So must migrant property in possession of trespassers be vacated in favour of owners. These steps, while protecting minority holdings, would retain greater interest in the minority owners, and build and create confidence in their future in the Valley. It would be fair and reasonable to assume that some of the young people, who have settled outside, might not feel it safe to return to an uncertain and unassured future in Kashmir, especially



if special programmes and facilities for their resettlement are not guaranteed to them.

In regard to the socio-economic sphere vital for the future well-being and progress of the Pandits, representation should be assured for them in educational, technical, professional and other institutions and services. Owing to the spectacular advance in education and progress in other areas, the "backward community" status of the majority needs to be reviewed, and merit should now be the determining factor for entry into and for promotions in the above institutions, State services and enterprises, in future, without any riders or exceptions.

Incentives should be freely granted for industries started by the minority, and licenses and permits necessary for the commercial entrepreneurs of the community, sanctioned urgently. These steps are essential, in view of serious unemployment amongst them, especially aggravated by current land laws. These measures would promise the dawn of an era of economic advancement for this minority in Kashmir.

In the constitutional and legal spheres, full State subject rights and status, denied to many Kashmiris at present, should be extended to this community, as to those, who may have temporarily or permanently moved out of the State. This would generate a feeling of equality and equity among all Kashmiris. Again, all laws, rules and regulations or procedures, which directly or indirectly discriminate against or segregate the minority, need to be reviewed and repealed.

Last, but not the least, the creation of a State Minorities Commission, on a permanent and statutory basis, with the authority of an ombudsman, is imperative, as promised in the past by more than one Chief Minister. It would provide an important legal framework for an effective window for ventilating and objectively redressing the grievances and disabilities of the minority, fairly and independently. If the community fails under the present dispensation to secure a fair and reasonable representation to State elective bodies, the Commission could devise suitable measures. The appointment of a Minority Commission, without any powers of investigation and intervention, in the fifties, proved to be a non-



starter. Neither did it act *suo moto*, nor did it inspire confidence in the minorities, without a statutory backing.

In order to ensure protection and advancement of the special ethnic, cultural, religious and linguistic rights and interests of Kashmiri Pandits, and to assure them fair and equal status at law, and opportunities in the governance of the State, it is essential that this historical minority be adequately represented in the State legislature and other elective bodies, to enable them to carry out their civic duties and legislative responsibilities, and to present views and advice on matters relating to the people, in general and minority affairs, in particular.

Envisaging difficulties about the elective representation of minority groups in the legislatures, the Jammu & Kashmir Constitution had included provisions to protect their rights, firstly, by creating reserved constituencies, and secondly, offering legislative seats to them through nominations.

The current system of delimitation of constituencies seriously affects their free choice and free vote and a level operating field, much to their detriment, and they go almost unrepresented in protecting their special interests through the political process.

Necessary amendments for declaring reserved seats for Kashmiri Pandits could be effected in the J & K Constitution, on the same principles as under Section 49. Under the J & K People's Representation Act, territorial adjustments could be made to ensure election of this minority's candidates to legislatures, by elimination of apprehension of outvoting by an overwhelming majority.

As regards providing representation to the minority groups by reservation, the State Constitution in Part VI, Section 48, reserves 24 seats for Pak-occupied areas, and under Section 49, proportionate seats for the population of Scheduled Castes, and two seats for women, under proviso of Section 47 in the legislative assembly.

Similarly, for the Legislative Council, under Section 50, one seat each is reserved for Kargil and Ladakh, Doda and Poonch, one seat each for Jammu & Kashmir municipalities, and two seats for panchayats, making in all 10 seats, reserved for special representation.



Apart from the above, the Governor nominates eight persons under Section 50(6) to the Legislative Council (3 out of backward groups, five intellectuals and supporters of social service and co-operatives). The Kashmiri Pandit community would easily qualify for such nominations, and provide spokesmen for their cause to advocate protection of their special interests in the J & K Legislative Council. This needs the early attention of the government.

It is important to note that representations can be provided by nomination under the existing constitutional provision, without having to make any amendments of the J & K Constitution or People's Representation Act or other laws, and without prejudice to the interests of the majority or other communities, the Kashmiri Pandits would be enabled to discharge their civic duties, legislative representation, and fulfil their constitutional obligations — denied to them through absence of representation in the State.

The covenanting of the above ways and means, it must be appreciated, however, would offer to some extent fair play, justice and equality to the aggrieved Kashmiri Pandits, and demonstrate the majority's determination to protect the rights, persons and future well-being of this minority.

In this connection, it is important to recall Section 25 of the J & K Constitution 1957, which mandates directive principles to be followed by the State, regrettably ignored by successive administrations so far. The article of faith quoted below, cries for faithful and scrupulous implementation without any further delay, by providing an appropriate constitutional and administrative machinery for enforcement of the Section to carry out the directive, and achieve the desired results.

Section 25 (Part IV): "The State shall combat ignorance, superstition, fanaticism, communalism, racialism, cultural backwardness and shall seek to foster brotherhood and equality among all communities, under the aegis of a secular State."

Sustained efforts to carry out this directive would not only be corrective, but curative of the current malaise in Kashmir. With better understanding, greater awareness of constitutional obligations, and a political will, an amicable, mutually accommodating and progressive future could be assured for all.



It is appropriate, in this context, to refer to other long-standing difficulties of Kashmiri Pandits, which call for sympathetic consideration. At the dawn of Indian Independence, they eagerly looked forward to sharing the benefits of freedom, equality and progress in the J & K State, and were confident that after the State's accession to India, the grant of "responsible government" as demanded by the political parties, and with the installation of a new administration in the State, their economic position would improve, and they would be assured of justice, equality and fair play.

Unfortunately, they had to face in the early fifties disabilities, discrimination and deprival in regard to job opportunities, promotions and entry into educational and technical institutions. They found that 90 per cent of State government jobs, promotions and seats for educational and technical institutions were, irrespective of merit or seniority, *reserved* for the majority community in Kashmir, which was declared a "backward community", deserving of special weightage or protection.

The Kashmiri Pandits were required to compete, along with other minorities in the State, against the remaining ten per cent available. Since there were no other avenues of employment, due to absence of industrialisation, and traditionally not attracted by commerce, they faced the dilemma and desperation of a bleak future for themselves and their children. It is of interest to recall that the only two factories owned by Kashmiri Pandits then were also taken over by the State.

It was nearly 50 years ago that protective reservations were introduced in favour of the majority community in the State, and undoubtedly, its members used the time and opportunity since then to utilise the facilities offered to them, not only to cast off their backwardness, but to establish a meritorious and educationally advanced society, with good jobs in hand, and elevated themselves to stand up to open competition and merit.

It is, therefore, important that an objective review of the current situation is conducted by an independent experts' committee, to examine if the continued reservations (overwhelming in percentage terms) are to the advantage of those originally targeted, and how far these need to be modified in the best interest of all the people of the



State, without any distinction, particularly in the use of advanced technology, essential for the future.

Furthermore, the economic position of the Kashmiri Pandits worsened due to the agricultural land reforms introduced in the state in 1950, which hit them hard. By the 'land-to-the tiller' rights granted to cultivators of land, land owned by the Pandits (as of others in the State) were transferred to the tillers, without payment of any compensation by the new owners or by the State, resulting in expropriation of these lands from the original or traditional owners, depriving them not only of the land, but the share of produce or incomes arising therefrom.

Similarly, large landed estates and jagirs were taken over, broken up (beyond 20 acres), and no compensation was paid to the original landlords for the lands acquired, thus affecting a large number of families in the State. The original owners were deprived of such lands and incomes arising out of these lands (owned, acquired and held for generations) was lost, without receiving any compensation for such losses. It is common knowledge that considerable manipulations took place at the hands of some people (not Kashmiri Pandits) in Kashmir, to have themselves declared and registered in the record of rights, as self-tillers of lands, depriving the actual cultivators from owning their lands, without any compensation. There were no industries in the state to absorb such ex-landlords or provide alternative and sustaining income for their families. Coupled with loss of income from land reforms, the Kashmiri Pandits found it difficult to enter into Government service (the main employment organisation in the State) or to secure openings for higher education and technical training, which multiplied their economic problems, with the future offering little or no hope for their subsistence and advancement.

Sections 19 and 20 of the J & K Constitution, whereby the right to work and free education was accepted in principle as a directive, was not a mandatory provision, and as such, could not provide alternative income to those deprived of their means. The authorities need to find solutions to these problems, to harness the talent and goodwill of such citizens in the State.



**Notes**

1. Minority concepts, basis, limitation etc., are briefly yet aptly described, in general, in Encyclopaedia Britannica - Vol. 13, Pages 562-573.
2. United Nations Charter came into force on October 24, 1945 (with India signing as an original member). The primary purpose was to maintain international peace and security, developing friendly relations amongst nations, and cooperation, based on the sovereign equality of members etc. U.N. Year Book, 1996.
3. Universal Declaration of Human Rights adopted and proclaimed by the U.N. General Assembly on December 10, 1947.
4. International Covenant on Civil & Political Rights, in force from March 26, 1976.
5. Constitution of India (1991), Government of India, Ministry of Law.
6. Commentary on the Constitution of India. D.D. Basu, 2 Vols. (1959).
7. The Constitution of J & K State, Justice A.S. Anand, 1994.
8. The Protection of Human Rights Act (1993), enforced from January 10, 1994. Published by Government of India, Ministry of Law.



## Chapter 10

### *The Sheikh and The Pandit*

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By all accounts, Sheikh Mohd. Abdullah was the most towering of the twentieth century leaders of Kashmir, who strode outstandingly over the State's political firmament and exercised the widest impact on its social and political evolution. More than 50 years (1930-1982) of records, official and unofficial, of his political role and importance, thinking and working, exist. He has left behind his own testament in the form of an autobiography,<sup>(1)</sup> affirming his versions and committed views of events, historical happenings and public occurrences.

His writings are of great interest and relevance and need to be examined in the light of his views conclusively, without interpreting him wrongly and passing ex-parte judgements against him. So far as the beleaguered Kashmiri Pandits are concerned, the repeated turmoil in their lives could also be better understood by appropriate cues from his autobiography. In making comments about individual Kashmiri Pandits and their role in the main body of his life-story, he had taken pains to write a special chapter (No. 73) devoted to this community exclusively, and to write rather freely and gratuitously.

Reflecting on the relationship between him and the Kashmiri Pandits, Sheikh Abdullah<sup>(2)</sup> says:

"I myself come from the stock of people, whose ancestors were Kashmiri Pandits, and through my veins runs the blood of this community. My ancestors, four or five generations removed, were Kashmiri Pandits. During my whole life, my relations with this community were, in the words of Robert Frost, as between two lovers, sometimes sour and at times sweet. There may be differing



opinions about them, but there can be no two views on their intelligence, competence and charm. It would be unfair not to make comments about the ability and activities of this community, who number not more than a few grains of salt in the flour, as the saying goes; yet Kashmir would undoubtedly be 'tasteless' without them. Nevertheless, the truth prevails, that on different historical occasions they have appeared as instruments of tyranny and oppression, that is why their political role may have become questionable." (Translated from *Aatishe-Chinar*).

Unfortunately, his last rendering of history is laced with inexactitude and faulty perceptions. So was his reading of other religions and philosophies somewhat erroneous. These views naturally detract from the value of a document of significance that the autobiography of the Sheikh could have been. All the same, any comments on the language, style and tenor of writing would also be superfluous and not of much consequence, and hence, not made in this connection.

Bernard Levin<sup>(3)</sup>, in a saucy comment, has appropriately said, in another context: "There is no feeling, only calculation, no heart, only thoughts, no fire, only smoke, no God, only religion." Much has been written on Sheikh Sahib, and the more one looks at it, the more confusing is his personality and not the least, is his autobiography, written originally in Urdu, with more calculation than honour, by two collaborators (one of whom is none other than his dear Begum). In the whole sweep of the book, it is difficult to delineate and discern views on his heritage, prior to the medieval era.

Undoubtedly, Sheikh Sahib bore a commanding personality, in more senses than one. More positively, he infused great moral courage in the masses and created self-respect, self-confidence and hope in them, and so to say, 'raised them from cattle to men'. This revolution, by itself, is a debt that could never be adequately repaid to him by the people of Kashmir, who had for long suffered much, from economic, social and emotional degradation. Nevertheless, despite the revelations of his leading role, he apparently emerges not as a moulder of destiny, but one who took short-term advantage of the opportunity provided by the ineffectiveness of the then rulers,



against the growing tide of political awakening in Kashmir and India.

In the ultimate analysis, he revealed himself as an actor of turmoil, rather than a statesman with the constructive purpose of long-lasting change. Sometimes his uncertain outlook, his wavering beliefs and in some respects his myopic vision, resulted in a waste of God-sent opportunities for long term amelioration of the people's plight.

To understand his beliefs and actions better, one would have wished to have read from the Sheikh, more about the influences that worked upon him during his college and university days, leading him to the path he later tread. Sadly, he does not reflect upon the impact of communalist ideas and the atmosphere prevailing then in Aligarh and Lahore, and the influence of the Ahrars and Ahmadis, in particular, on him. Nor does he say anything about the support and sustenance given by the British political office, details about which could have been revealing, if not extolling. He admits having been accused of playing the British game, but the Sheikh is tight-lipped on these and many other important influences on him seemingly operating on his beliefs and actions. The British game in Kashmir was well reflected in various actions, interventions and political steps taken, since Maharaja Ranbir Singh's time, if not earlier. He uses hindsight to the fullest extent in presenting his views.

His stature, presumably, prompted him to see others as Lilliputians (people of small substance and mould). His manipulation of the "dumb driven masses" of Kashmir, under the influence of religious sermons with tendentious interpretation of the holy book, delivered in a mellifluous voice, had become so pronounced, that the innocents meekly believed his actions and words to be ordained by heaven. The so-called writings on tree-leaves were widely interpreted and propagated as godly guidance and will.

As a Muslim religious leader of the time remarked, the Sheikh was the best maulvi they have had, "easily fawning and exploiting rigid communal attitudes and base feelings". The misuse of religion



and its places of worship for political purposes was developed into a fine art by him in Kashmir, and bore the stamp of the lessons he had learnt in the Punjab and Aligarh mosques. He firmly institutionalised religio-political linkage in Kashmir, of which he was the true godfather. His Friday sermons, the operations of the Mujahid Manzil organisation, his running of the Auqaf Islamia Trust, dealing with Muslim religious places and properties, and the taking over of Idgah/Hazratbal, together with other sectarian and religious activities, resulted in his dual and divided allegiance to religion and politics. This dichotomy led to suspicions amongst the non-Muslim membership of the National Conference and precipitated the resignation of three Kashmiri Pandits of the executive committee, to the detriment of secularism in Kashmir.

The Sheikh was criticised for attempting to “usher in nationalism through religion”... says Kashyap Bandhu,<sup>4</sup> on his resignation from the National Conference. “He is Qaid-i-Azm, and we accept him as such, but he aspires to be the *Amir-e-Millat* (chief of the religious sect), and his desire to be *Amir-e-Millat*, unfortunately will negate nationalism”. Such conflicting attitudes scared the minorities in the National Conference, and having protested against several practices followed at the meetings, some notables sent in their resignations”.

Sheikh Sahib’s three-point approach to creating an upsurge against the Dogra rulers, to gain political ascendancy for and amongst Kashmiri Muslims, can be simplified as: One, the charge of discrimination practised against the Kashmiris, for the injustice and the tyranny suffered by them; two, their debasement under the Treaty of Amritsar, as slaves and chattel, and three, the deprivation of economic, religious and political opportunities for them.

Without going into the validity or justification for these three highly emotive planks for creating disaffection and raising a banner of revolt, it is obvious that these proved to be most effective in influencing the Muslim masses and for using them in successive agitations with telling effect, under the benign eye of the British. This benevolence was reflected more clearly before the deposition of Maharaja Pratap Singh in 1889, and the imposition of outside



administrators, the demand for a Political Resident, the setting up of the Glancy Commission, appointment of a British Prime Minister and other designated administrators, with complete control and supervision over the State administration.

The Sheikh often reiterated his love for Kashmiri Muslims (whom he called, a '*qaum*', or a nation), and he did this with some feeling. But he did not hesitate to make contradictory and critical comments against other Kashmiri communities, and this he did, unfortunately, without deep thought or introspection. His unrestrained fulminations against individuals, some families and other politicians, were ascribed to his weaker moments, where he was unable to suppress his personal prejudices and predilections. He felt strongly that he was always right and those who disagreed with or differed from him were either imbeciles or fifth columnists. He would seldom seek or make an effort to understand the other point of view. That is why many of his decisions became inexplicable and were open to criticism. He was, unfortunately, not an ardent lover and practitioner of democracy and tended to be impetuous, impatient and arbitrary — the hallmarks of a dictator. His book also fails to reveal incidents relating to his openness of mind.

In 1389, came Sultan Sikandar — the iconoclast, whom history recognises, "as a religious fanatic, resolved to obliterate every sign of Hinduism". "He destroyed as many as he was able to of the beautiful temples and all the learned books of the Hindus he ordered to be sunk in Dal Lake. Then he turned to the people offering them conversion, death or exile. His persecution of the Hindus was terrible and the treatment of the people so miserable that they prayed for deliverance from his rule, but it went on for 23 years". (Pearce Gervis, *This is Kashmir Carsell-London*).

What sort of place does Sheikh Sahib grant this Sultan, in the history of Kashmir, in the lives of the Kashmiri Pandits, and in the future relationship of brotherhood amongst the people there, is singularly unexplained. He, in fact, finds clumsy substitutes like a convert Seh Bhatt (Saifuddin), who according to the Sheikh, "committed atrocities against the Kashmiri Brahmins, many of



whom migrated from Kashmir and settled in different parts of the Indian subcontinent”.

And yet, to Sheikh Sahib, Sultan Sikandar shares no blame for lacking the compassion to save this community from the outrages of Saifuddin, under the very nose of this Sultan.<sup>(5)</sup> “From 1753, Kashmir came under the rule of the Pathans and from then on until 1819, no less than 28 Shaha-i-Durrani governed this country. The oppression of the Hindus, in particular, during that time was unparalleled in the history of Kashmir. It has been described by Lawrence”, “as a period of brutal tyranny, unrelieved by good works, chivalry or honour”, while Younghusband says of the governors, “they thought no more of cutting of heads than plucking a flower”. It is said that the surviving Kashmiri Pandits from this onslaught of execution, conversion and emigration did not exceed eleven families. In the light of these quotations, it is a travesty of truth to say that the Kashmiri Pandits gave up Kashmir to seek the patronage of the Mughul rulers in Delhi, and not because of oppression and hardships suffered in Kashmir under the Sultans.

It is also interesting to note how the Sheikh failed to appropriately laud and eulogise the great thinkers and leaders of pre-Islamic history and tradition in Kashmir, some of whom received worldwide recognition.

He was, it is a pity, not well-informed about or enamoured of his own and Kashmir's heritage prior to 1300 AD, and as such, could not view the ancient and early medieval period with balance and equanimity. His knowledge of history was selective and influenced at best by contrition. He seldom referred to Ashoka, Kanishka, Vinayadita, the saintly king, the great Lalitaditya, who went forth from Kashmir to conquer the world, who was victorious over the Turks and people of Central Asia, during whose reign Kashmir rose to such a height as she had never before. The builder of Martand should have been the pride of all Kashmiris.

Many of the Sheikh's beliefs were unsupported by historical facts or acuity and appeared to be the product of shopside fibs and mullahic tales. He chose only facts which supported him and he needed no effective historical testimony to affirm his views,



howsoever fallible. Some people who knew him well, did not hesitate to accuse the Sheikh of twisting facts to suit himself. His knowledge of other religious philosophies, sadly, was drawn, not from recognised texts or authoritative writings, but from what persons, like Mullah Mohsin Fani — a denounced heretic — could offer him through the Dabistan. That is why the misunderstandings about other religions and the lack of appreciation of humanity and compassion in other people, which was the despair of the Kashmiri Pandits.

*Aatish-e-Chinar*, it is realised, did not set the Valley on fire, nor in any manner illumine the Kashmiri masses with its wisdom and warmth, instead it threw a blanket of cold ashes over them. It did not satiate them in their search for faithful facts and useful revelations, moral guidance and socio-political reassurance, nor give them a positive direction or hope for their future progress and prosperity. Instead, the Sheikh disappointed and overwhelmed them with a cacophony of self-praise and self-delusion, and they, his people, felt left in the lurch in a sea of 'I' and 'me'. The more egotistic he turned, the less objective he became. He offered no plausible solutions to the Kashmiri people's problems, only protestations tempered by vague idealism. His reading of the past, his studied interest in the present and his notions for the future were in conflict and confusion and, therefore, a realistic and progressive course of thought and action eluded him.

Sheikh Sahib's approach to a lasting and permanent solution of the political problems of the Kashmiris had, in later years, been assiduously linked to the dispute between India and Pakistan, as some would say, for non-altruistic reasons. He found many excuses to frustrate solutions. All efforts to arrive at a fair and reasonable settlement were thwarted, and the fires of fury were kept burning, under the influence of some selfish politicians. No solutions were offered or attempted, only problems were conjured up. It would appear that some of his colleagues believed that as long as he was in power in the State, it mattered little how and when the future of the Kashmiri people was going to be settled and assured, as happy citizens of the country.



He entered into many agreements and reached many decisive understandings, but none of these achieved finality in solving problems of long-term national importance or overcoming misunderstandings. Conclusivity was seldom arrived at, and curtains seldom rung down on such issues. His change of mind and reopening of agreed issues was an unhappy feature of his thinking and Kashmir's tragedy.

The Sheikh repeatedly pledged to the Kashmiri Muslims of his constituency that their interests were safe and supreme with him. He did not hesitate even to tell them that if he felt that their association with Pakistan protected their future, he would be the first to opt for that country. Yet, on the occasion of Pak aggression against Kashmir, he outrightly condemned Pakistan and advised the Muslims to throw in their lot with India, where according to him, their true interests lay. He adduced sound and positive historical, political, economic and other reasons in support. Most disappointingly, he gave indications later of equivocation and did not follow up on his prior declarations. This sophistry created much confusion amongst his followers, friends and other communities, and shook their faith in the earlier assertions of the Sheikh. The result was that the basic issues of Kashmir got clouded and no progress could be made towards a permanent settlement of its problems. It may be inferred, that in order to remain in power and assured glory, a situation of unsettlement suited him and his friends best.

Off and on, he was critical of India, turning his outbursts on contrary and conflicting developments which did not suit him. When some outspoken friends asked him whether, if India did not suit the masses in Kashmir, should they not opt for Pakistan and be done with it, he smiled and asserted that the Kashmiris knew fully well that they would be treated as second class subjects in Pakistan, and they would not be able to gain such economic benefits and political importance as with India. Further, their real leaders would have no recognition or status in Pakistan. Such an attitude puzzled people about his true intent.

Despite such arguments, he had a long list of grievances against India, Indian leaders and Kashmiri Pandits, mostly



imaginary, and he hardly took any steps after his return in 1975 to power, to get the Kashmiri masses closer to India and bring them politically and economically into the national mainstream. Instead, he kept the people dangling at the altar of an undefined and indefinable Kashmiri identity and wanted more and more autonomy for himself. His Gandhism and pro-Indian sentiments came best to be expressed through his public statements and press comments when outside Kashmir, while his anti-India tirades were reserved for the Valley.

It was said, perhaps cynically, that the Sheikh wanted a new sultanate for himself in Kashmir, assured with all the rights of a free Indian citizen, with the extra privileges of a State-subject, including protection under the Indian Constitution, with greater autonomy for the State, without any reciprocal obligations for himself and for the Kashmiris. Did he, one wonders, want the Kashmiris to be wooed by both India and Pakistan, and both these countries bleed over Kashmir? Indeed, he became a prisoner, Janus-like, of his own two-faced visions.

The autobiography, delineating as it should have, the essence of Sheikh Sahib, his dreams and aspirations, his successes and failures, neglects through its 905 long pages, to portray a discerning and faithful picturisation of this colossus, who strode over Kashmir for nearly half a century.

What kind of a human being was he? What were his failings and strengths? What touched his heart? What left him cold? He fails to give us a peep into the innermost recesses of his heart, his true beliefs and his confirmed faith. His considered and detailed views on art and culture, history and heritage, science and technology, his visions of the future economic and political horizon of Kashmir have, much to our regret, eluded this book. From 1975 to 1982, he had an open field under propitious conditions, which he failed to utilise in the interest of the people of Jammu & Kashmir and India.

The Sheikh has given us almost no glimpse of his other life (non-political one) — a life of good things. He had fine gastronomical taste, loved good food and revelled in luxury. He had



a quick eye for beauty, but he does not touch upon his experiences, even as experiments with truth. He however, says that he entered "into matrimony to avoid temptation when he came into contact with many pretty and glamorous women, at a time when he was at his youthful zest." In fact, he refers to the weaknesses of other leaders with some glee. Many people, however, ascribed his marriage, to a lady from a quasi-European family, to the machinations of the British political agencies and to their need for a favoured political agitator.

Sheikh Sahib, as the fourth descendant of a Kashmiri Pandit, was not, so to say, known as was a Hindu-hater nor a rabid communalist, especially in the later years. He dramatically and courageously rescued some Pandits affected by communal riots in Kashmir, and helped them, while earning their ever-lasting gratitude. He felt proud of such acts and was fond of recounting and relating these, perhaps as proof of his secular beliefs. He also had Hindu friends, though not many. The reference to his conversion from communalism to nationalism, influenced initially by Dr. S.D. Kitchlew, and later by Pt. Nehru and Gandhiji, has unfortunately been cursorily dealt with in the book. The story of the initiation, its progress and its culmination, would indeed have been of great interest to students of history, politics and human relationships.

On page 211 of the book, Sheikh Sahib refers to minority rights and opines that there should be no gain at the expense of the non-Muslim brethren and he did not envisage a New Kashmir, without fair treatment of the minorities. On page 222, he again recognises the need and importance of assuring them full and equal rights. However, his subsequent actions and criticisms of the Kashmiri Pandit minority, went against his own earlier views and commitments. This community, unfortunately, became his *bete noire* and he began to see in its members all the craft and political chicanery, which in his view, deprived the Muslims masses in Kashmir of their rights, privileges and prosperity, even under Muslim rule. He has written extensively on this and devoted some chapters of his book to the subject.



It is worth recalling that the Kashmiri Pandits were involved in three agitations during the Dogra rule, since 1889, for ameliorating their conditions. These agitations were not sectarian, communal or religious and did not seek anything at the expense of other communities in Jammu & Kashmir. The State Subjects agitation took into account the position of the Kashmiri Muslim majority in jobs and land protection. The Pandits fought single-handedly against growing educated unemployment in Kashmir and the struggle ended after the 1927 notification, affirming some rights.

In November 1931, B. J. Glancy was appointed as Chairman of a Commission to look into the complaints of the people in Kashmir and to make recommendations. The Commission submitted its report on March 22, 1932, and the Maharaja accepted it on April 10, 1933, advising "minimum qualifications for a government post should not be pitched unnecessarily high and effective measures should be taken to prevent the due interest of any community from being neglected".

In effect, it discriminated against the Kashmiri Pandits, as their graduates were equated with matriculates of other communities. Though the report laid stress on employment by promoting industries in the State, practical action remained a mirage for the Kashmiri Pandits. The Kashmiri Pandit member of the Commission, however, supported the cause of the Kashmiri Muslims, while the Jammu Hindu member resigned from the Commission.

The disappointment over the terms of the Glancy Commission report took the shape of what was called the 'Roti Agitation' by Kashmiri Pandits, when schools and colleges were boycotted. Its demands basically were: (i) for tilling, lands to be offered free of rent; (ii) special stipends for industrial training; and (iii) financial help for starting industries. Though non-communal demands were made by the Kashmiri Pandits, this agitation led to bitterness and a communal riot, which could not fairly be blamed on the Kashmiri Pandits.

A correct view of the true facts of the 'Roti Agitation' by Kashmiri Pandits has eluded Sheikh Sahib, and his memory has not served him fully when he refers to the advice or admonition of



Pt. Nehru to Kashmiri Pandits at Shital Nath grounds, Srinagar, "to reason with them, to change their attitude and join the mainstream in Kashmir". It is true that Pt. Nehru exhorted them to help the national movement and strengthen it. A delegation from this community also visited him and explained the true position to him. His advice to them, in his own words, is quoted below:

"Safeguards and special protection might perhaps be needed by a group, which was backward, educationally and economically. They were in the nature of crutches for the lame and the halt. Why should those who are keen of mind and swift of foot require them? No one has ever accused the Brahmin Kashmiri Pandits of lack of intelligence or ability to adapt to a changing environment. All that they should demand was a free and open field for talent and ability (1940)." Did the Sheikh follow Nehru's advice?

In September 1967, due to the conversion of a Kashmiri Pandit girl, bad feelings erupted, on the failure of the government to prevent such happenings. Also, grievances of the community regarding discrimination in recruitment to government services, admissions to technical schools and vocational and other opportunities for Kashmiris, came to the fore. The government gave an assurance of sympathetic consideration to the demands and the agitation ended. However, many young men, disillusioned by government apathy, left the State. Yet, the agitation which started off as an offshoot of a religious conversion, did not lead to communal violence or antagonism.

In soft-peddalling the persecution and suffering of this minority over the years, through religious bigotry and iconoclasm, the Sheikh fantasised scapegoats and bent backwards to rewrite history. In chapter 53 of his autobiography, he chose to condemn the Dhar family, which was *persona non grata* with him and stood condemned, because one Dhar imposed taxes on the shawl trade. He saw most Pandits in dark and grey hues and barring exceptions, he treated the rest with undeserved suspicion. He embarked, in the last chapter (no. 73), upon a tirade against the whole community, and came out with an unfair interpretation of history, with unjust recriminations.



Even though the Sheikh acknowledged that the Pandits were essentially fair and intelligent, despite their being overwhelmed in numbers, he surprisingly designated them as 'spies and fifth columnists,' who supposedly exploited the Muslim masses.

It is well known that the agitations started by the Kashmiri Pandits did not have an anti-Muslim bias but stood for the betterment of all Kashmiris, irrespective of religion or creed.

The State-subjects agitation really started in 1889, for preference in jobs and protection of lands for the locals. It was not exclusively for the benefit of the Kashmiri Pandits alone, even though they gave the lead and took up the cudgels and fought through press and public campaigns both inside and outside the State. This agitation ultimately led to the issuance of a historical notification on April 20, 1927, defining and classifying categories of State-Subjects.

Again, the agitation against the Glancy Commission recommendations (1932-34) was not anti-Muslim, but against discrimination and deprivation of employment opportunities and devaluation of academic qualifications suffered by the Kashmiri Pandits, who pleaded for equality of treatment for all Kashmiris. It demanded 'bread' (roti) for the unemployed. Even the *satyagraha* of 1966, after the Parmeshwari conversion case, stressed against discrimination in recruitment to government service, demanded admission to technical and vocational schools and other opportunities for the people of Kashmir. The agitation caused suffering to members of the Pandit Community by punitive action taken by the government. But it was stopped only after the government gave solemn assurances for sympathetic consideration of their demands.

Naturally, the community sought protection against conversion, but beyond that, there was no communal dimension to it. However, since the government reneged on their assurances, many young Kashmiri Pandits were disappointed, saw the writing on the wall, a bleak future, and left the State for greener pastures.

Elsewhere, the Sheikh lauded the Pandits' patriotism, their love for Kashmir, traditions, history, and the land of their illustrious



forefathers, exposing himself to contradiction. If the Sheikh had not proceeded on a voyage of negative discovery, he would have found no justification for his criticism and his characterisation. He would, in fact, have recognised that despite their miniscule numbers, isolation, poverty and even in a state of persecution, the Kashmiri Pandits as individuals and as a community, were true to their soil, its peaceful and secular traditions, endowed with a spirit of brotherhood and good neighbourliness, and bore no political antagonism to the Muslim or other communities.

That was the correct voice and version of history, which could not be negated, fairly and truly. "*Phir bhi hum se yeh gilla hai — ki wafaadar nahin.*" (Still you have a grievance that we are not faithful).

Sheikh Sahib's single most important grievance against the Pandits, which rankled in his mind, was the help sought from Maharaja Ranjit Singh in 1819, by a group of Pandits, at considerable risk to themselves, after suffering from severe persecution at the hands of the Pathan rulers and their satraps in Kashmir. This single instance of a bid for outside help was, time and again, assailed by the Sheikh, unfairly and maliciously, to condemn the bonafides, honour and loyalty of all Pandits.

This incident, therefore, calls for detailed examination in its correct historical perspective. Kashmir's history is replete with frequent instances of non-Kashmiri Pandits, or Muslims, seeking outside help and pressing invitations on others to invade and overthrow Muslim rule there. It is, therefore, most surprising that neither the Sheikh nor his historian scribe, referred to those historical betrayals and took a more balanced and less condemnatory stand against a single act chalked against the Pandits. One is tempted to infer from his attitude that treachery by Muslims against Muslim rulers is, perhaps justifiable in the Sheikh's perception of historical events, but not by others. Numerous incidents in Kashmir's long passage through history occurred, which shed a flood of light on the struggle against Muslim power. But Kashmiri Pandits cannot be held guilty by any just and fair reasoning for the same.



Pertinent questions arise! Who went to Paras, the king of Jammu, for help against the Sayyids during Mohd. Shah's rule? Didn't Yusaf Shah Chak's men approach Raja Man Singh at Lahore and plead for the invasion of Kashmir during Akbar's reign? Didn't one Chak ruler in Kashmir support the Mughals against another Chak ruler? Didn't Muslim delegations from Kashmir urge Akbar to free Kashmir from the Chaks in 1568? Wasn't Ahmad Shah Abdali pressed to depute a commander to invade Kashmir in 1748? Didn't Mir Muqiem and Khwaja Dedamary beseech Ahmad Shah Abdali to defeat Abdul Qasim, and didn't the former gain victory through Aqasi and lay the foundation of the cursed Pathan rule in Kashmir? Who helped Raja Ranjit Dev on his invasion of Kashmir? Didn't Atta Mohd. Khan negotiate with the Afghan Shah Shuja for an invasion of Kashmir in 1807? Didn't Fateh Mohd. Khan conspire with Ranjit Singh against the Muslim rule of Atta Mohd. in Kashmir?

These and other acts of disloyalty and treachery abound in Kashmiri history and these cannot be blamed on the Pandits. How could the Sheikh ignore these important events also detailed by Muslim historians? How could he pick up a single and solitary act of desperation by a few persons in great distress, when the survival of the entire community was at stake, and then condemn all of them till eternity?

The Kashmiri Pandits had passed through more than 500 years of harsh foreign Muslim rule, under extreme conditions of religious, economic and political oppression. Yet, in fairness, they cannot be held guilty of betraying the traditional and true values of friendship, brotherhood, secularism, patriotism and love for Kashmir and its common heritage. Sheikh Sahib's grievance is thus an inexplicable aberration, when in fact, he should have expressed gratitude for the end of foreign rule in Kashmir.

The Sheikh also decries that during the Mughal regime, the Pandits became instruments of oppression against the masses. He forgets that they did not act differently from the Aghas, Sayyids, Khwajas and Mirzas, etc., amongst the Muslims in Kashmir, who rendered loyal services to the rulers and yet were not blamed and



called spies or quislings by the Sheikh. His logic is, therefore, clearly flawed and his criticism unfair. Similarly, his feeling that he was spied upon by members of the minority community in the post-Independence era, arose from a distrusting mind and the adversarial role he conjured up for himself. He had no faith in honest difference of opinion and bore a historical scare, so to speak, which clouded his thinking and influenced his actions. In an open society like India, with abundant freedom of the Press and a vibrant democracy, there was no need to spy on loyal countrymen, much less for a small minority steeped in traditional amity, and to resort to cloak and dagger practices against a revered leader, who, in spite of his bias, was held in esteem. How much damage has been caused to Kashmiri Pandits by such comments can be realised and the impact of such falsehood goes a long way to embitter relationships between different communities.

Sheikh Sahib was critical of Indian leaders, like Sardar Patel and others, who did not see eye to eye with him on various issues, and he did not hesitate to ascribe communal motives to them. There are many controversial references in his book on political developments in the State and India, particularly after Independence. There are also other erroneous and fallacious references relating to Kashmiri Pandits. These are open to rebuttal and correction, but it is not expedient to do so within the limited scope of this review. Yet, in the final judgment, despite many failings, Sheikh Sahib's life-work will go down in Kashmir's history as a great contribution by a leading Kashmiri. With his tantalising personality and pioneering role, his name should be written in letters of gold in Kashmir's contemporary political life.

The Kashmiri Pandits would, all the same, be advised to be aware of the thinking of Sheikh Sahib and those he might have influenced, especially by his questionable statements and criticisms.

However, it is not in the least intended to bring the *Sher-i-Kashmir* to retributive justice and to make him stand up to objectivity. Nor do we expostulate further on his differing views and failings, even though a correct verdict of history should be fair



and just and help to remove misunderstandings and enhance friendships in future, amongst different communities in and outside Kashmir.

The author is most gratified for the opportunity of having personally known Sheikh Sahib for many years, (while in and out of power), and having had the privilege of many quiet and informal moments with him in Kashmir, New Delhi, Bombay, Paris and other places, when his affection and regard were overwhelmingly bestowed, memories of which shall always be cherished. These would, by any standards, represent the best in a human being. It would be most unfair to him, if while praising him, I deliberately or otherwise suppressed any negative aspect or error honestly and frankly perceived by me. I readily realise that perfection belongs to gods and Sheikh Sahib, at his best, was a great Kashmiri, and at his weakest, a human being.

#### Notes

1. *Aatish-e-Chinar* by Sheikh Mohd. Abdullah - Urdu, 1985. English summarised version by Khushwant Singh.
2. Ibid: Page 884.
3. *In These Times* by Bernard Levin, New York Times Review.
4. Kashyap Bandhu: *Why I resigned from National Conference* - Reprinted in Naad, New Delhi, January - March, 1993.
5. Both Muslim and Hindu historians of Kashmir do not agree with Sheikh Sahib.



## Chapter 11

### *Whither the Pandit*

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The enforced absence and escape of the Pandits in 1989-90 from Kashmir is not a mere flight from death or injury, but an exile in its true connotation. To quote Salman Rushdie: "Exile is a dream of glorious return. Exile is a vision of revolution. It is an endless paradox, looking forward by looking back".

Earlier migrations had kept the Pandits' memories and endearment for Kashmir alive and fresh, as sung by Kashmiri poets like Naseem, Bishan Narain Dar, Hijr, Chakbast and other contemporaries, including Iqbal. Despite troubles and travails, the Pandits felt assured by their songs of love, attraction and rightful interest in their heritage in the Valley and looked forward to their earliest return. They believed it were the dead alone who could not. They felt convinced that they were wrongly and unfairly blamed for various failings and mistakes and made to suffer', for no fault of theirs. They had a strong conviction that, before too long, truth, fair-play and justice would prevail, and that physical, material and moral restitution with dignity, actualise in their favour. Otherwise, they could well qualify for a refugee status, in terms of U.N. Conventions.

However, presently terrorism continues in Kashmir and is impeding the return to normalcy. On terrorists and terrorism, King Hussein of Jordan said, in a recent interview. "Terrorists are enemies of peace, enemies of life, enemies of hope, enemies of society, enemies of what should be normal between people. Nothing pains me more than to see acts of terrorism and attitudes attributed to Islam". While the Kashmiri Pandits were keen to return to the



Valley in safety, security and dignity, forget the wretched state of migrant existence in the refugee camps, rehabilitate themselves in their homes and hearths and escape the inhospitability and ignominy of morbid jealousy in other parts of the State, and restart their lives with friendly, good neighbourly and traditionally rewarding relationships in Kashmir, unfortunately the situation in the Valley was not reassuring. Even as a few of them did not migrate from the Valley, and eked out a precarious and miserable existence there, the experience of a few other returnees did not offer encouragement to others to take to the path back home.

It would appear that many people were not interested in clearing the air, offering cordiality and reassurance to the returning Pandit. A few jarring voices resounded against a welcome to them, which made their resettlement in Kashmir risky and undesirable.

A sample of the articulated views of influential politicians and public figures would show that the readmission of the Pandit into the Valley was not wholly without reserve. Conditions were imposed, some harsh, others unfair, impractical and authoritarian.

Prof. Abdul Ghani, spokesperson of J & K Hurriyat Conference, a medley of disparate persons without common objectives, goals and policies, guided by non-conforming methods, means and practices, without the approach, responsibility and mandate of a local political party, said: "I wish they (Pandits) could go back to their land and participate, as actively *in the freedom movement as we do*".

Maulvi Umar Faroukh, Chairman, Hurriyat Conference, announced: "We have grave concern for them (Pandits), but they are themselves responsible. The Indian Government exploited them in order to give a communal colour to our movement. We want them to come back, as they are part of our culture, *but they will have to take as active a part in our movement as we are taking*".

It was obvious that the demand for secession of Kashmir had thus assumed a more appealing and esoteric garb of a freedom movement, and the Pandits could return, only if they participated actively in the anti-government agitation for which there were no defined aims and objectives, nor agreed programme, nor a bill of



rights outlining the prospects of individuals and communities for their future. The loosely talked about issue in different fora was self-determination. The Pandits were not invited to talk or take part in any defined plan, with their future rights and prospects spelt out.

On June 6, 1994, Hurriyat's Prof Abdul Gani,<sup>2</sup> in reply to a newspaper question on encouraging the Kashmiri Pandits to return to the valley, said, "First, there were not enough houses to rehabilitate the 1,50,000 Hindu refugees in the Valley — many of their houses were either burnt or occupied — *their return would be conditional to their going along with the views of the majority* and that the Hurriyat could *not assure them protection...* finally, the Pandits owed the people of the Valley an *explanation, if not an apology, as to why they had left their homes in the first place*".

No change of heart, no welcome, no sympathy; only indifference, insensibility, callousness mixed with amnesia, and no protection or building bridges of understanding either. The learned professor clearly forgets that the flight of the Pandit from Kashmir was not a voluntary act, but a result of public and repeated exhortations, threats and announcements, over loudspeaker systems and public advertisement and posters issued by militants and their supporters from religious places, coupled with visits to the Pandits' homes, non-voluntary friendly advice to quit, and select killings through which they were forced to seek a safe sanctuary outside.

The linkage of the issue of normalcy with the return of the Pandit to Kashmir offers a stamp of legitimacy to the prevailing conditions and, as such, is of interest to observers and political parties. It should be relevant to examine the views of another politician. Professor Saifuddin Soz<sup>3</sup>, of the National Conference: "As for the people of Kashmir, restoration of autonomy within the framework to the 1952 Delhi Agreement offers the basis for such a settlement. The political settlement on the suggested lines envisages the return of the Pandits to their homes and hearths. *If a political settlement ultimately means peace, it should also mean the Pandits' return home*".

In effect, Professor Soz declares that the Kashmiri Pandit is a hostage to 1952 autonomy, upon which his return home is



incidental to and contingent upon. The Pandit's right and freedom to live as he wished in his home, is not available, so to speak. Such declarations betray specious logic, stark insensitivity and crass injustice, if not political double-speak.

The above viewpoint and other such utterances could not but be repudiated and rejected completely, for a variety of reasons. So much about the views and feelings of the so-called "freedom - seeking" political parties and their supporters.

The failure of the Central and State Government to protect the people, minorities in particular, from militancy and its multifarious consequences, subversion of law and order, insecurity of life and property, systematic outrage of victim rights, disruption of social intercourse and economic order are only too well known to call for a detailed recital. Appropriate policies and plans to meet the situation, short and long term, appear at best, non-existent, and if any, remain unimplemented.

The migrant problems were characterised only by drift, dither and delay. While for the individual migrant, suffering continued unabated without light at the end of a long and dark tunnel, his last hopes of return to his house and hearth dimmed. The apathy that the refugee confronts is abysmal and is classical of medieval times. What sort of return he could or would have and when, nobody knows, nor is anyone able to give him any hope.

Without going into specific details, it might be fair and useful to recognise what could influence a migrant to return and resettle in the Valley. An assured safety and security for himself, his family and property, would naturally be his core concern, basic to other necessary requirements. These would come within the broad ambit of housing, employment avenues, entry into educational, technical and scientific institutions, and religious freedom. For housing, he would need restoration and repairs to his home, shop, etc., to make them habitable with grants-in-aid for repairs.

For employment, he would expect to be handed over his demitted job or an equivalent, and for professionals and businessmen, adequate facilities for self-employment.



For the exercise of religious freedom, he must have religious property returned, without any encroachment, and repaired for use.

The need for a single window for addressing migrant problems in a separate department is a must. It would not only build confidence, but help in their speedy rehabilitation. The creation of a statutory authority or commission and introduction of a Hindu Religious Property Bill, would go a long way to build confidence and help in establishing peaceful and amicable conditions for the Pandits' return to the Valley.

To summarise, the Central and State Governments must identify and activate permanent solutions to the problem of the migration of the Pandits from Kashmir, establish credible means and activate concrete plans for making voluntary return a realistic option.

It appears that consequent upon the partial paralysis of the administration in the State in 1989-90, a feeling had grown amongst some extremist elements that 'azadi' was near and a religious or fundamentalist State was in the offing in Kashmir.

One such believer, Sajjad, wrote an open letter in English in December 1992, to 'Koshur Samachar' (Kashmiri Hindu Magazine) in Delhi, advising the Pandits that "Islam is the only system by which humanity can live in peace." A rejoinder exposed the myth of his assertion, though not by referring to medieval history, but affording examples of Muslims fighting Muslims, in the past, and more recently, in Iraq/Iran, Iraq/Kuwait, Arab/Africans, Afghanistan, massacres in Kuwait and murders in Pakistan. These brought death and destruction to the contestants on both sides, all followers of Islam, with each calling his act of barbarity, 'holy'.

Sajjad recommended living "gracefully under a true Islamic Constitution", without any clarification as to which one is truly Islamic — Indonesia, Malaysia, Algeria, Iran, Turkey, Pakistan, or Bangladesh. In fact, all Islamic countries are supposed to have truly Islamic constitutions, yet they differ substantially from each other. Again, no standard Islamic Constitution is known to exist. What does Sajjad, therefore, refer to?



Didn't a constitution<sup>4</sup> which guarantees equality, democracy, justice, freedom to promote and practice one's religion and administer religious property and institutions, fundamental rights etc., which are all in accordance with the sacred injunctions of Islam (with directive principles for guidance), not make it acceptable as truly just and Islamic?

Certainly what is perpetuated by the gun in Kashmir could not be Islamic. If we were to ponder deeply over these questions and keep religion (relations between man and god) separate from politics, each to have its primacy in its own sphere, strictly according to its tenets, without any evangelical zeal and dogmatism, then confrontation and conflict between man and man, (no matter what caste, creed and class) would recede and lead people to happier socio-political and religious relations.

Let us not convert political problems into religious ones and political battles into communal fights, as the colonialists did to keep the people disunited. Let peace be with all but not of the grave.

Though related to self-determination, yet relevant to Sajjad's views, one might ask some questions to place the issues in proper perspective as applicable to Kashmiri Muslims. Have they democratically decided, by an assured majority, what they want in Kashmir and what sort of a constitution they wish to have?

For those inclined in favour of Pakistan, has that country set up for itself an ideal Islamic Constitution worthy of emulation by the majority community in Kashmir? What are the safeguards for Muslim and non-Muslim minorities and others there? What social, political and constitutional status could be offered under their Constitution in Pakistan to Kashmiris, in comparison with units like Baluchistan, Gilgit, Chilas, or POK?

Does the Pakistan Constitution, federal or otherwise, offer to the States more autonomy or authority than any State in India? Would Pakistan be willing or able to match either the existing constitutional powers and provisions of India or of Jammu & Kashmir, for the benefit of the state?

To protect the majority community's identity, special interest and privilege in Kashmir, would or could Pakistan—Pak Occupied



Kashmir—guarantee a status conforming with the constitutional position and special democracy assured in India?

Can Pakistan assure Kashmiris, their coreligionists, or for that matter, any Islamic country in the world (if allowed to be seceded), of independence or '*azadi*', economic viability or full autonomy in any way superior to that of India? These and other crucially relevant questions arise, which must be fairly and reasonably answered, before claiming and clamouring for a change in the political or constitutional status of Kashmir. For the sake of the people of Kashmir and their future generations, what must be borne in mind is the unauthorised and illegal occupation by Pakistan of Gilgit, Chilas, Hunza, Baluchistan, etc., and incorporation of those territories into the Northern Areas of Pakistan, under the direct administration of the Federal Government, and what treatment and freedom Pak Occupied Kashmir has received for the last 50 years from the Islamic Government of Pakistan.

The story of the people of the areas occupied by Pakistan, from the erstwhile J & K State and designated Northern Areas, is pathetic. The Kashmiris there have had no political identity, civil rights or constitutional status. This area spreads over 70,000 square kilometres and includes Gilgit Agency, Wazarat, Astore and Skardu tehsils of Ladakh and is administered by Islamabad's Ministry of Kashmir Affairs and Northern Areas.

Some time back, a specious and sham council was nominated, without any designated powers or authority or rights for the people. The Kashmiris in POK have had no access to political or constitutional rights or representation in the Pakistani Government or any parliamentary fora. In fact, the legal and constitutional status of the areas has been subject to the changing decisions of the Pakistani judiciary and the vacillation of the authorities, without any finality and rights for the people.

It is interesting to recall the circumstances under which Gilgit fell into Pakistani hands. It was due to the betrayal of Major Brown, the British Commanding Officer of the Gilgit Scouts, a force of 600 men, which was being used for patrol duties of the neighbouring areas of Gilgit with China. When the J & K Ruler



acceded the entire State (as it comprised on August 15, 1947, including Gilgit) to India on October 26, 1947. Major Brown took the Maharaja's local representative, Brig. Ghansara Singh, into custody, cut communications with Kashmir State, and handed over the area treacherously to Pakistan, who raised their flag over it on November 3, 1947.

The British authorities had assured the ruler of Kashmir of the return of the territory of Gilgit to J & K State on withdrawal from India. Lord Mountbatten, the last Governor-General, was infuriated over Brown's action, but could do nothing to get the area back. Major Brown, overnight, became a hero in Pakistan, and was honoured with the Star of Pakistan, posthumously. It is thus that Gilgit passed on to the vassalage of Pakistan, without any civic or democratic rights or economic relief for the people of Gilgit, since 1947.

The creation of Pakistan Occupied Kashmir (POK) was a result of the illegal occupation of J & K State territory by force of arms, and according to international law, cannot be recognised as part of Pakistan. The area on the other side of the ceasefire line was perfidiously designated as 'Azad Kashmir'. References to its political or constitutional status have been made earlier in the book, in regard particularly to its constitutional illegalities, repugnances, infirmities and uncertainties, especially in the sphere of its autonomy and constitutional status as a part of a State, and the fundamental and human rights of the people and their social and economic progress.

Even after 50 years, Pakistan has not established a framework for the future of POK, taken any practical steps for the elementary empowerment of the people — politically, economically and socially. The situation relating to these people of erstwhile J & K State, without an assured and progressive future under the Pakistan Constitution, is pitiable. They are second class subjects, with no prospects of political independence, under a so-called Islamic Constitution.

It must be galling to their co-religionists in J & K State to realise and know the true and unfortunate position of the people of Pak Occupied Kashmir and the Northern Areas. But reality has not



dawned upon them. Recognition of the stark facts has been morbidly missing in an overall value judgement of the benefit of an Islamic Constitution. Otherwise Sajjad's invitation might only have been offered with a degree of scepticism and incredibility.

Let us, therefore, forget all differences between man and man in Kashmir, and pledge to each one of them a lawful constitution and way of life which assures them of justice, liberty, fraternity and democracy, as the essence of all religions — Islamic and non-Islamic. That is the earnest prayer of the Pandits for themselves and everybody else in Kashmir and the rest of India.

With faith, unity and charity at heart and cooperation from the Kashmiri Muslim majority, the present tragic phase in the history of the Pandit minority should pass. It behoves all men of goodwill, irrespective of religious, economic, or political beliefs, to strive to ensure that all the fears, susceptibilities and difficulties of this minority are removed, that present injured feelings are assuaged and solid bridges of understanding are built in the interest of all in India.

The Kashmiri Pandits are gratified that Kashmir is part of India, otherwise only memories of their ancient home would have remained. Upon this consolation, nay confidence, should blossom consolidation, so that all share its bounties as equal, respected and valued citizens of India. This is possible if we act with courage, determination and faith in the secular traditions of our country, proud of our patriotism and democratic way of life. Otherwise, if true secularism and real democracy should tragically fail in Kashmir, the consequences for the country would be terrifyingly disastrous and too apocalyptical to control.

Concern about the prevailing situation in Kashmir and its agonising impact on the beleaguered Kashmiri Pandits is but natural. They have suffered physically, mentally and materially, and generally see no early end to their ordeal; while some "have become resigned to the fact that Kashmir as known to them is lost for ever". It is generally agreed that present conditions are not conducive for the safe, peaceful and orderly abode of members of this minority and their families in the Valley, unless these change



substantially and peaceful life returns. A large number of them have been martyred, and still others fear the arsonist, the kidnapper and the assassin. The Pandits have lost their homes, their lands, their businesses and their avocations, and their places of work and worship. The pity is that they have been targeted for no fault of theirs.

Despite all these depredations and mayhem, many people are confident that the situation is not irretrievable. They also believe that India and its leadership (in or out of power), even under the worst of conditions, can never allow Kashmir to be broken away. Otherwise, cataclysmic turmoil within India and serious geopolitical-cum-military complications and international repercussions would follow, no matter what price the country may have to pay or for how long and however daunting the struggle to uphold rights in Kashmir, in order to ensure that peace and order prevails.

It is a sobering thought that three successive victories in wars with our neighbour has not weakened the resolve of our nation to maintain and strengthen Indo-Kashmir links, as one country. Whatever sacrifices the nation may have to face in the future in protecting our integrity, sovereignty and unity, the country will never waver from it. Pakistan should realise it without entertaining any delusions.

Reflecting on the chequered history of the Kashmiri Pandits, they have over the epochs demonstrated a sustained tenacity to rise fresh from their ashes. They may be down, but they are not out, they may appear to be damned, yet are not doomed. They need, however, to renew their faith and determination that the community is not racing towards its extinction, and their precious heritage will be preserved beyond their individual survival.

A symbolical indication is perceptible in the valiant and resolute stand taken by a number of them who have not forsaken their hearths and homes and the land of their forefathers, and many have returned, even under perilous and appalling conditions, and stuck it out against all odds. We raise our hats to the eight martyrs of Sangrampura and the three brave academics of Gool, who lost



their lives in cold-blooded and insensible killings recently. They, and later martyrs and their families, deserve our deep homage and wholehearted sympathy. Their spirit and resolve will be vindicated. The road may be long and arduous, but victory over evil insurrection and diabolical inhumanities must and will have to be won.

Incidentally, the interest and support of overseas Pandits has been heart-warming, and this needs to be enlarged, made vocal and directed through influential socio-political ginger groups for greater effectiveness, with terrorism and fundamentalism as prime targets. They have done a magnificent job, even though much more remains to be done.

Consternation, deprivation, hardships and shock are faced by the few still in the Valley, as well as by those who have migrated. The latter, though physically safe, are miserable and oppressed because of dislocation, lack of suitable accommodation and means of livelihood, paucity of medical or educational facilities, coupled with psychological problems, aggravated by the absence of effective short-term programmes and long-term plans for relief and rehabilitation.

For the families in the camps, life is nothing short of hell. For other refugees, bereft of freedom, home and hearth, avocations and places of worship, it is a mere existence. Though some measures have been taken and half-heartedly implemented at official and unofficial levels, they are painfully inadequate. The anxiety of the evacuees to remain close to Kashmir, for their eventual return, under auspicious circumstances, to the Valley, is understandable.

The stop-gap arrangements help them, physically and psychologically, to remain within or close to Jammu & Kashmir, and in touch with the developments in the Valley, howsoever distasteful their living conditions. If what was done by the then Ministry of Relief & Rehabilitation for the 1947 refugees in India, was expeditiously followed by the authorities for Pandit migrants and resident victims of Kashmir, the redress could be gratifying. Hopefully, the concerned Central and State authorities will, before long, reactivate themselves sympathetically, into effective units, for



the sake of these victimised Indians, who on many counts appear to be forsaken by the Government and political parties.

The Kashmiri Pandits have, in the interim, to steel their hearts, forge exemplary unity, display the courage of their convictions, exercise abundant patience, strive hard and incessantly on a common platform with unanimous demands to pull themselves out of adversity, and move from insignificance to significance. They need to remain cautious against voluntary self-liquidation under any pretext or influence. The present phase is yet another test for their trials and tribulations and they must and will come out triumphant and be assured of restitution, fair and square.

The Pandits' life and future are so deeply inter-linked with India, that there is no alternative for their survival as a community, except through the strengthening of the bonds between India and J & K, the restoration of peace and amity in the Valley, and the re-recognition by Pakistan of the unbreakable nature of the Indo-Kashmir relationship, which will endure at all costs.

#### Notes

1. The suffering of the Kashmir Pandits is fully documented and detailed in a report, *Violations in Kashmir*, dated December 20, 1995, and submitted to the National Human Rights Commission, New Delhi, and published by Panun Kashmir Movement - Central Camp Office, Jammu. The report deals with: (i) killing of Hindus (ii) destruction of cultural symbols (iii) destruction of properties and (iv) discrimination etc. and lists names, dates and addresses and references of police First Information Reports.
2. *Kashmir's Cautionary Tale* - an article by Sunil Sethi, published in the daily, Excelsior, dated June 9, 1994 - Quotes Prof. Abdul Ghani, verbatim.
3. Extracts from signed article by Prof. Saifuddin Soz, 1952, *Terms are the way out in Kashmir*, published in *Times of India*, New Delhi, dated October 18, 1995.
4. The elements of the preamble of the Constitution of India and the Constitution of Jammu & Kashmir.



## *Epilogue*

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Reflecting on nearly 10 years of insurgency in J & K State, it is appropriate to assess and examine the impact on its political, social, economic and religious aspects as well as the involvement of the Pakistani neighbour. A review of the situation would reveal (i) a degree of disruption of civic life, trade and industry (ii) the implanting of informers, spies and other agents to sabotage the unity and integrity of India (iii) a weakened local authority (iv) a feeling of alienation and antagonism of a section of the local population (v) frequent attacks on minorities, most of whom have migrated from the Valley (vi) the creation of a fear psychosis amongst the peace-loving members of the people in the Valley (vii) and running of camps in Pakistan and POK for training of men for armed action in the State.

An overall assessment would also confirm considerable improvement since 1996, in almost all spheres, in controlling and eradicating terrorism from the Valley and the steady return of conditions of normalcy. The defence authorities meanwhile have to ensure that other vulnerable parts of the State are also protected.

Views may, however, differ on the policies adopted by India, and the exact degree of success achieved, notwithstanding the holding of parliamentary and local assembly elections and the installation of a democratically elected State Government. In evolving a response to terrorism, India appears to have remained within the framework, concept and methods of law and order. This approach cannot be adequate, against a carefully planned proxy war, and with the supervision by experts in subversion, resulting from the direct involvement of men, material and ammunition from



Pakistan and to some extent, the tacit sympathy of some locals. The initial impact of the insurgency was favourable for the terrorists. The Indian side took time in preparing and implementing a compatibly effective policy for defence in order to bring terrorism under control. It did not, all the same, induct expeditiously the necessary advanced technology in the field, the matching equipment, a centralised defence command and structure, necessary manpower with specialised training and indoctrination and other requisites essential for quick results.

India's highest priority was the critical need to protect the country's borders in Kashmir State and to eliminate its porosity to prevent infiltration or exfiltration of men, armament and other equipment used by the militants. The plugging of entry and exit routes, especially at the line of control, off and on, under fire cover, could, however, not be foolproof and adversary movements continued, with the borders remaining violable. Instances of these came to light, as in *Chrar-i-Sharaf*, through individual or mass killings or kidnappings of civilians. The isolation and insulation of the Valley could have had manifold benefits and exercised its own psychological impact on the State's population. Modern day surveillance and night-scanning equipment to cover the extensive border, hilly and forested areas with a difficult terrain, was not much in use. The defence forces also had to make do with limited manpower on a broad and long front, lacking competitive arms and equipment and fast means of movement (vehicles or helicopters); without the benefit of accurate information or enemy intelligence and limited support from local populations in certain operating areas. In vast areas with a sparse defence cover, no local volunteer force supplemented for security, terrorists could threaten and act at will. Special training programmes had also to be reoriented against insurgency and guerrilla warfare, to yield better results. Improved knowledge of local language, customs and sensibilities in many areas of operation was useful in securing cooperation and avoidance of criticism.

Despite many difficulties, the defence services have done well in steadily controlling and improving the situation in Kashmir.



They deserve our praise for defending their country at great risk, sometimes at the cost of their lives and in helping to restore peace. Medical units of the defence services have been specially praised by civilian populations in Kashmir for their unselfish service rendered under difficult conditions. As against this, the behaviour of the terrorists was barbarous, who indulged in murder, rape, kidnapping, extortion and other violations. In addition, Pakistan had unleashed and continued a propaganda war directed against the State and India with a view to misleading, coercing and swaying the Kashmiri people. They used all means, fair and foul, in their disinformation armoury to create an atmosphere of fanaticism and antagonism towards the local and Indian governments by utter falsehoods and tirades. These activities needed to be met effectively with a well-conceived and a systematic programme based on facts. The war of words had to be won before the war of the gun. Mischievous information had also to be corrected, factually and urgently, before it took root and complicated local issues.

The population had, in addition, to be assured by the civil authorities of essential food supplies, of helpfulness, continuous maintenance of common utilities and hospital and other services to ease their difficulties. People of goodwill also needed to be mobilised to build bridges of friendship and to overcome falsehoods so that traditional harmony and goodwill amongst the people of the Valley did not suffer, but improved.

## II

After the Indian parliamentary elections held in 1996, the Bharatiya Janata Party won the largest number of seats and were invited to form a government. Mr Atal Bihari Vajpayee, as its leader, was sworn in as Prime Minister on March 15, 1996, subject to his proving a majority on the floor of the Parliament within 10 days. Not being able to secure the support of the requisite majority, Mr Vajpayee resigned on March 28, 1996. The Janata leader, Mr. Deve Gowda, supported by 13 coalition parties designated as the United Front and the outside backing of the Indian National Congress, assumed office as Prime Minister on June 1, 1996, and won a vote of confidence on June 12, 1996.



Encouraged by the smooth holding of elections for parliamentary seats from Jammu & Kashmir State, the Election Commission of India, in consultation with the Union Home Ministry and the State administration, decided that the time was ripe for taking the democratic process to its logical conclusion in J & K State and worked out a poll programme for election to the State Legislative Assembly, during September, 1966. After a free, fair and well-attended poll, the J&K National Conference was returned to power with a two-third majority. President's rule of the State ended on October 8, 1966, and Dr Farooq Abdullah was sworn in as Chief Minister, together with a cabinet, on October 9, 1966, at the Convention Centre, Srinagar.

The policy declaration of the Farooq Government, while affirming the accession of the State to India, and its unity and integrity, assured the people of the State of the fulfilment of their expectations, removal of unemployment, economic reconstruction, revival of industries, peace and prosperity through a politico-economic programme and a hard-working, honest and people-oriented administration. The election promise of greater autonomy and the return and rehabilitation of Kashmiri Pandit migrants was high on the Government's priority list.

### III

In January 1997, the Jammu & Kashmir government announced the setting up of a committee to examine the implications of regional autonomy and make recommendations under the chairmanship of Dr Farooq Abdullah and the working chairmanship of Balraj Puri. This Committee was required to review, examine and make recommendations regarding the imbalances and distortions of the Jammu and Ladakh regions in the spheres of electoral, political, administrative, economic, industrial, social and cultural empowerment of the regions. In the opinion of the working Chairman, the Committee would also examine the rights, claims and interests of the minorities in the Valley, within the framework of regional autonomy, for which political safeguards would have to be defined, recommended and implementation assured. It was, therefore, natural that the Kashmiri Pandits would



submit detailed memoranda to this Committee, explaining and filing coordinated claims upon which the Committee could come to fair conclusions, in the best interests and to the satisfaction of the community. It was hoped that the regional autonomy committee would deliberate deeply and sympathetically to find solutions to the vexed questions of regional autonomy and overcome the existing bitterness and bad feelings among the people.

Another committee, dealing with Jammu & Kashmir State Autonomy was set up and notified on January 11, 1997, under the chairmanship of Dr Karan Singh, "to examine the question of *restoration* of autonomy" to the State of Jammu & Kashmir with actual terms of reference as follows:

1. To examine and recommend measures for the *restoration* of *autonomy* to the State of Jammu & Kashmir, consistent with the Instrument of Accession, the Constitution Application Order 1950 and the Delhi Agreement of 1952.
2. To examine and recommend safeguards considered necessary for incorporation in the Union/State Constitutions, to ensure that the constitutional arrangement that is finally evolved in pursuance of the recommendation of this Committee, is inviolable.
3. To examine and recommend measures to ensure a harmonious relationship between the State and the Union.

This notification of the State Government inviting suggestions, views and memoranda gave three weeks for this onerous task. However, Dr Karan Singh, Chairman of the State Autonomy Committee, sadly resigned in the first week of August, 1997, presumably on personal grounds and was replaced by G Mohiudin Shah of the National Conference Party and Public Works Minister.

The notification for examining the question of restoration of autonomy to the State of Jammu & Kashmiri and especially para (I) of the terms of reference for the Committee as listed above, came as a rude shock. *Firstly*, the basic issue of dilution of the 1952 autonomy had been prejudged and unilaterally decided upon by the Government even before this complicated question of the constitutional status of the State could be independently discussed, analysed and adjudged by the Committee.



*Secondly*, in coming to a decision, the considered views of the public and other interested persons and organisations were not invited to help the Committee to come to a non-partisan decision and thus it eliminated public and expert opinion on this substantive issue. It was a perverse and premature decision twisting the terms of reference prejudicially which caused serious bias in the future working of the Committee.

*Thirdly*, the notification assuming the whittling down of the so-called 1952 autonomy did not explain and specify the exact steps, the extent, and the relevant provisions which diluted the autonomy of which '*restoration*' was sought.

*Fourthly*, it unfairly suppressed and bye-passed the legal and constitutional Delhi Accord of 1975, as approved by the Indian Parliament and the State Legislature, in supercession of the Delhi Agreement, especially ignoring the review procedure for past and future enactments.

*Fifthly*, it unjustly and banefully assumed lack of faith, despite strict legal and constitutional safeguards under Article 370 of the Indian Constitution and other provisions relating to extension of laws to the State and incorrectly sought additional safety against inviolability by the Centre.

*Sixthly*, it overlooked the impact of relevant amendments of the Jammu & Kashmir Constitution (1957), on the terms of the 1952 Delhi Agreement, and the legal fortification of the autonomous status of the State and its powers.

*Seventhly*, it made no reference to the implications of the regional autonomy committee's interlinkage with that of the J & K State Autonomy Committee and the means for the resolution, omission or overlapping of common issues, in cases of conflict of interest, diverse manifestation and interlocking of the subject of autonomy before the two committees.

*Eighthly*, if the State Autonomy Committee was, as declared by its Chairman, to examine Centre and State relations, the J & K State's position on the Sarkaria Commission was not referred to and the decision anticipated by the Centre on the Sarkaria Commission Report has been foreclosed by the State by a jump



ahead, in order to follow a lone furrow apart from other States. Dr Karan Singh, as Chairman of the Jammu & Kashmir State Autonomy Committee, in his letter of February 22, 1997, addressed to the Pandits said, "I have publicly stated that the minorities in the State should enjoy the same protection and privileges as are extended to minority communities in other parts of India."

It is hoped this announcement is taken as a commitment and made into a firm recommendation by the Committee. It is important that discussions, deliberations and the conclusions of the two committees are conducted with an open mind and transparency, duly considering all aspects of issues objectively, without bias or partisanship, in order to achieve unanimity and wholehearted acceptance of the decisions and recommendations. The committees would be well-advised to consider public memoranda in open meetings and sessions without rushing to conclusions in haste.

#### IV

The J & K National Conference joined the National Front and acquired extra political weightage and a voice in national affairs together with representation in the central cabinet. In February 1997, Mr. Deve Gowda was the first Prime Minister of India to visit Jammu & Kashmir State in the last 10 years and made an announcement of a liberal economic package for the State, with wide-ranging implications including railway lines, power projects, second national highway, debt waiver of about Rs 1,275 crores and compensation for losses suffered due to militancy.

It was also announced that financial assistance for the return of the migrants would be given. But Mr. Deve Gowda had no time to see the Kashmiri Pandit migrant camps nearby and observe the wretched conditions of those living there. It was hoped, however, that the financial assistance announced would actually materialise, would be properly and scrupulously utilised and the infrastructure projects would come into being without delay.

The State machinery would have to be activated, toned and geared up to meet the challenge of economic reconstruction. Unemployment and resettlement are a high priority which brook no delay. The expeditious creation of conditions of peace and security



for the return and rehabilitation of Pandit migrants calls for speedy and sympathetic steps. The need of the hour was a public - responsive administration, altruistic and caring political parties and mutual cooperation, to whom the good of all the people is the ultimate charter in action.

It was hoped that all sections of society would unitedly rise to the occasion, and with determination, act for the future of the people, in accordance with the overwhelming mandate recently given by them. Such opportunity, it must be realised, does not come often. The Kashmiri Pandit community was waiting for specific plans and programmes for return to their homes, rehabilitation, improvement in the living conditions and interim relief, as also facilities for useful employment and vocations, together with better educational facilities for their children.

Mr. Deve Gowda as Prime Minister lost the support of the Congress Party and was replaced by Mr. I. K. Gujral, the leader of the United Front in the Rajya Sabha on April 20, 1997. Gujral was the first of the Prime Ministers from VP Singh in 1989 to Deve Gowda in 1997, to have personally visited the Kashmiri Pandit's migrant camp in Nagrota, Jammu, on April, 27, 1997, seen their misery and promised "all necessary steps to mitigate their sufferings and to ensure that they will return to Valley with honour and dignity". The Chief Minister was present on the occasion and heard the Prime Minister's commitment.

## V

But the Gujral Government fell and the President dissolved Parliament on December 4, 1997. The poll process for a fresh election was set into motion once again by the Election Commission, for completion in March 1998.

Meanwhile, no practical plans and programme had been worked out and implemented by the J & K State administration with regard to Kashmiri Pandits, except words of circumspection, reservations, difficulties and reinterpretations regarding the earlier commitments. The Pandits were greatly disappointed. The wishy-washy interim report of July 14, 1997, of the government sub-group was received with dismay. It was sketchy, tentative, dilatory, subject to



amendments and did not come to grips with the issues firmly, expeditiously and systematically as was necessary.

In addition, two tragic outrages by terrorists in the State, firstly on May 21, 1997, selectively killing eight innocent Pandit youngmen in Sangrampura in Badgam District of Kashmir and secondly on June 15, 1997, of three blameless academicians, a principal and two teachers at Gool. in the Gulabgarh area of Udhampur District, sent shock waves amongst members of the Pandit community and raised further doubts in the ability of the State Government to protect them and resettle them with peace and dignity. These deaths were followed by the bombing of the MLA hostel in Srinagar in a high security zone. It was clear that unless the State Government was prepared to take effective decisions and vigorous steps to eliminate the militants, foreign and local, peace would not return, not only to the Valley but to other parts of the State infested with terrorism as well.

The heinous, vicious and selective murders (part of ethnic cleansing in Kashmir) of 23 Kashmiri Pandits, including nine women, four children and the arsoning of a religious place of worship on January 25, 1998, on the eve of Republic day, in village Wandhom in Srinagar District, by foreign terrorists from Pakistan with the help of some locals, spread gloom. Prime Minister Gujral visited the site of the massacre on January 28, 1998, sympathised with the families of the victims, condemned the inhuman killings and warned Pakistan.

The Pandits within the State and outside, and their organisation in India and abroad, reacted unitedly to grieve over and condemn the barbarous outrage against innocent men, women and children and demanded vigorous and effective measures for their protection. It was strongly stressed that half-hearted steps and apathy could only help the militants, especially the foreigners, and the administration and that the political parties should not remain helpless and mute spectators to violence.

The Pandits, from 1989 (if not 1985), had suffered from genocide, destruction of homes and business, desecration and encroachment of religious places. The losses are too tragic and



enormous to list. Suffice say that the losses are well documented and authenticated and the National Human Rights Commission is the due recipient of the relevant details. Furthermore, what is shocking is the revelation of the special on the spot report of the National Human Rights Commission, shortly after the Wandhom massacre of January 25, 1998, that "the population of the Kashmiri Pandits in the villages of the Valley had sharply declined from over 20,000 to a mere 800 families in the last five years" and now stands at "not more than six to ten families in each village". It was obvious that the ethnic cleansing of the Pandits is proceeding at a fast pace. Though their population has not reached the nadir of eleven families, as during the oppressive rule of Sultan Sikandar (1389 - 1420), it is hoped that this tragic history of Kashmir is never repeated. It is also fervently expected that the sacrifices of the Pandits will not go in vain and their woes and wails will subside at the touch of human sympathy and early and effective action by the State and Central Governments.

Not only should the authorities adopt more short-term measures to combat terrorism, but they should enforce long-term *preventive* means to eliminate terror tactics and human suffering. The security services must also devise a coordinated strategy to tackle the entry, movement and operations of the militants and their supporters.

The migrant Pandits have had extensive cogitation over their prospects of safety, security and an early return to homes in the Valley. The consensus was in favour of, "wait and watch". The early return of the migrants has received another set-back. It would, however, be appropriate to note, that for the first time since the outbreak of terrorism in Kashmir, some secessionist political parties and politicians have voiced condemnation of terrorist outrages, openly and publicly. If such a trend gains strength, things might return to normalcy sooner rather than later. Dr Farooq Abdullah not only condemned the atrocities, but promised urgent steps to trace the culprits and bring them to justice.

The Pandits, despite all odds, have not given up their rights and claims, not only to return to Kashmir but to live there in dignity, safety and self-assurance; no matter how much time it might take.



They will once again rise from the ashes; success and glory shall light their path. Poet Iqbal, descendent of a Kashmiri Pandit himself wrote an apt couplet:

*"Kuchh baat hai ki hasti mittee nahin hamari,  
Sadyion raha hai dushman, daur-e-zamana hamara"*

(There is something unusual that our existence is not wiped out, though the enmity of centuries was borne by the passing times).

As for the restrengthening and reinforcing of Indo-Kashmir bonds, it is hoped that the Union and State authorities, with the active cooperation and support of the politicians and people at large, will take all steps, security-wise, politically and administratively, to not only overcome militancy in the State, but restore peace, progress and brotherhood among the citizens and fortify the national status of Kashmir in the Indian mainstream.

## VI

Consequent to the Gujral government's resignation, fresh parliamentary elections were completed in March, 1998. The Bharatiya Janata party (BJP) emerged once again as the single largest party and was invited to form a government. Its leader, Mr Atal Bihari Vajpayee, with the support of 18 other political parties, set up a coalition government which took office on March 15, 1998, and obtained parliamentary confirmation on March 18, 1998. It released a 'National Agenda' consisting of a programme agreed upon by the coalition partners. This programme, however, did not include some issues (forming part of BJP's own separate manifesto) like the abrogation of Article 370 of the Indian Constitution relating to J & K State, and kept aside other issues on which there was no unanimity amongst them.

While in the opposition, the BJP policy on Kashmir was critical of the predecessor governments, beginning with the granting of a special status to J & K State, an ineffective and inadequate response to terrorism in the Valley, lack of protection of minorities and human rights in the State and other outer areas, committed since 1989 in Kashmir by terrorists directed from Pakistan. The BJP favoured a 'proactive' policy in Kashmir, especially against the Pakistani proxy-war. However, their attention in running the Government at the Centre had also to be



directed to the stabilisation of its numerical representation in the Parliament and meeting the respective demands of its coalition partners, which haunted them. Opposition parties, meanwhile, made repeated references to a hidden BJP agenda, which the latter supposedly had, but did not disclose. The policies of the Government in respect of trade and industry, foreign investment, infrastructure, education, agriculture and irrigation, labour and other subjects were also questioned and analysed in the light of their *swadeshi* concept.

The nuclear option had been kept open by the previous governments since 1974. As a departure from the past, BJP wanted "to re-evaluate the nuclear policy and exercise the nuclear option to induct nuclear weapons", as specified in their election manifesto. This issue had also been included in the so-called, 'national agenda' of the coalition and created suspicion about their intentions. In answer to a query, the Prime Minister, however, said that there was 'no time frame' for going nuclear and that the option would only be exercised 'if need be'.

On May 11, 1998, came an electrifying declaration from the Prime Minister that three successful nuclear explosions had been accomplished (one being thermo nuclear) at Pokhran. These were followed by two more explosions on May 13, 1998, both under the banner of 'Shakti 98' (unfortunately not 'Shanti 98', as a harbinger of peace, which would have been consistent with the peace-loving traditions and policies of India). Flexing of muscles and flaunting of power is hardly in accordance with the Indian ethos.

However, India greeted its prospects of greater safety and security with national pride for the scientific achievement through indigenous technology in an area of extraordinary complexity. The tests had apparently become imperative because of the Chinese nuclear arsenal in the neighbourhood and in view of the repeated affirmations of its acquired nuclear capabilities by Pakistan. India also welcomed its impact on the hegemony of the declared nuclear powers, perpetuated by their discriminatory and restrictive doctrines, in total disregard of the avowed objective of complete nuclear disarmament and non-proliferation. India hopes that the international movement for eliminating all nuclear weaponry,



strongly advocated by them, will gain greater impetus and progress to fruition.

These explosions evoked mixed reactions in the world. While the Indian rank and file received the sensational news with jubilation over the Indian scientific achievement, some ruling party politicians unreservedly boasted about the emergence of India as a nuclear power which entitled her to join the nuclear power club. The manner of the declaration and the tenor of subsequent statements indicated that the party was in a hurry to influence public opinion, perhaps for its political gains. It also appeared that appropriate planning for a follow-up of political steps and response to issues emerging from the explosions had not been precisely worked out. The domestic and international ramifications and implications needed to be carefully and in detail evaluated and planned.

The nuclear powers received the news with shock and reacted vehemently with condemnation of India's action and with threats of economic sanctions against India. Many countries, particularly USA, were perplexed by the manner in which the Pokhran II tests had been conducted and the secrecy India was able to maintain, despite a system of world watch. It is astounding that they should have expected to be kept informed of such developments, when India was under no obligation — bilateral or international — to do so, especially as it had not breached any agreement or commitment. On the other hand, the degree of readiness achieved in stealth by Pakistan, demonstrated by them in detonating nuclear devices within few days of the Indian explosions, could never be explained away as a quick response nor raise the ire of the critics for Pakistan's aided and abetted proliferation. Yet India and Pakistan were equated in this regard, most unfairly.

Pakistan expressed their outrage and promised a nuclear response of its own despite pressure from the five nuclear powers and specially USA. Pakistan exploded four nuclear devices on May 28 followed by two more a week later, declared an Emergency, curtailed fundamental rights in the country and took other steps to



conserve foreign exchange, froze foreign currency accounts, to face the impact of a likely arms race and economic sanctions.

The attitude of the West was greatly influenced by the U.S.A. and the Pakistan-China axis. They and the U.N. Security Council (under the Chairmanship of China) demanded of India immediate stoppage of any further tests, signing of the CTBT/NPT unconditionally, and in order to prevent a conflagration and arms race in South Asia, to enter into negotiations with Pakistan, including on the question of Kashmir. Thus the Western powers not only reacted in fury at the Indian nuclear explosions, but unfairly went beyond this issue by trying to internationalise Indo-Pak disputes and the question of Kashmir. This attitude was later compounded by the American President's suggestion of involving China in resolving the Kashmir issue, as a neighbour of both countries. Since 1962, India has had a dispute over nearly 90,000 miles of its territory with China, who are also beneficiaries of a grant by Pakistan of a portion of Jammu & Kashmir State. Friendly relations between Pakistan and China had developed in 1963, since after the latter's conflict with India. President Clinton obviously did not realise that he was trying to revive the much-hated and unacceptable old colonial concept of "spheres of influence" and hegemony. The US also indicated imposition of economic sanctions against India which India said it would face determinedly and it would not have a serious impact on the country.

India's response to the unfair, misconstrued and exparte decision of the Security Council was an unilateral declaration of a moratorium on future nuclear testing, readiness to consider signing a non-discriminatory CTBT and a policy of discussions with Pakistan bilaterally on all issues. It is amazing that the U.S.A., which insisted on India signing the CTBT, had not themselves ratified the treaty so far.

India showed a determination to resist pressure from other countries and made efforts to explain its position. Should talks between India and Pakistan have taken place in Colombo in July 1998, at the SAARC meeting, Kashmir would most likely have been brought centre-stage. However, it can be assumed that due to



the U.S.A.-China nexus, Pakistan would be reluctant to enter into serious and sincere discussions with India, at Colombo or elsewhere, in order to arrive at a fair, reasonable and lasting solution, either on procedural aspects or substantive issues. Their game-plan would be to scuttle the negotiations, in order to bring pressure to bear on India, to agree to a third party or UN mediation; meanwhile intensifying terrorism and violence in Kashmir and increasing trans-border intrusions to heighten apprehensions of a war-threatened conflict. Alternatively, mounting economic, domestic, international and political compulsions on Pakistan could influence a change of strategy for presenting a credible image.

No matter how right, fair and just the Indian stand might be, Pakistan, as in the past, will be unwilling to see reason and reality, in its expectation of annexing Kashmir. On the other hand, no government or the people in India could ever agree to allow a part of its country to secede, after 50 years of accession and association.

## VII

For a constructive dialogue with Pakistan, it would be essential to consider the basic issues, shorn of rhetoric, distortion and vituperation, coupled with patience. Unfortunately, Pakistan's stand on Kashmir and many aspects of the dispute are characterised by self-created myths which have to be realistically examined, analysed and placed in a correct perspective. De-mythification would eliminate misrepresentation, falsification and circumvention and facilitate right conclusions. It is a pity that the repetition of these myths is pursued and harped upon as a policy by Pakistan, despite establishing the fictitious nature, errors and non-validity of their attitudes and stand. To illustrate, it would be appropriate to pick up a few Pakistani myths and examine these in the light of true facts.

**Myth One : Pakistan was formed of Muslim majority areas and without Kashmir, it is not complete.**

### **Facts:**

- i) The concept of Pakistan did not include Kashmir, and in seeking Pakistan, Mr Jinnah did not name it nor did the Lahore Resolution of 1932 mention it.



- (ii) India has more Muslims than Pakistan, therefore, on grounds of religious numbers, Kashmir should be, as it is, a part of India.
- (iii) With the death and burial of the so-called two-nation theory and the formation of Bangladesh, religion has ceased to be a relevant basis for the political association of people in the subcontinent.
- (iv) The status and suffering of the Bihari "Muslims", the Mujahirs and others, who opted for Pakistan, is a stark warning for Kashmiris.
- (v) There are more commonalities between Kashmir and India than between Kashmir and Pakistan.

What famous Indian Muslims think about Kashmir?  
Illustrated Weakly of India May 13, 1990.

Arif Mohamad Khan says: "I can approach the Kashmir question as an Indian and not merely as a Muslim.

- (vi) Indian Muslims generally are opposed to Kashmir going to Pakistan. For example, Ustad Amjad Ali Khan says: "I fail to understand how the Kashmiris can expect to solve their problems as an independent entity outside of the Indian Union or as part of Pakistan."

Dr Masoom Raza Rahi: "The national integrity of India is not negotiable. Under no circumstances should the so-called right of self-determination be conceded to the Kashmiris or to any other group of people".

**Myth Two : Kashmir was to have acceded to Pakistan and its accession to India was not valid.**

**Facts:**

- (i) Accession of the states was not dictated by religious considerations but by a ruler's choice.
- (ii) Under the Indian Independence Act (1947), accession of Indian States to India or Pakistan was by the completion and signing of the standard Instrument of Accession by the ruler and its acceptance by the Governor-General, which made it final.



- (iii) Mr Jinnah, by his statement of July 31, 1947, confirmed the sovereign right of a ruler to accede, according to his wishes.
- (iv) By August 15, 1947, over 500 native rulers acceded to India and Pakistan by signing the identical Instrument of Accession as prescribed and received the Governor-General's acceptance. J & K State, Hyderabad and Junagadh did not accede by that date.
- (v) Since the ruler of J&K State could not come to a decision urgently, he, on August 12, 1947, signed a standstill agreement with Pakistan, for maintenance of services, essential supplies and other facilities. Though this agreement was confirmed by Pakistan, however, to bring pressure on Kashmir State, the services and essential supplies were stopped, thus creating serious difficulties for the State. Kashmir offered a similar Agreement to India, which was not concluded, but India provided the services required and maintained them.
- (vi) In October 1947, Kashmir faced an invasion under the garb of hundreds of tribal armed men, who in the course of their advance towards the capital, killed people, raped women, destroyed property and the small State forces could not stop them. They came to less than four miles away from Srinagar.
- (vii) On October 26, 1947, the ruler signed the Instrument of Accession in favour of India, which was accepted by the Governor-General on October 27, 1947, and Indian forces entered Kashmir to defend it from the raiders.
- (viii) The accession had complete validity both in terms of the requirement of Britain and its law and in accord with Jinnah's expressed policy statement also.
- (ix) The UN later also accepted the accession of J & K State to India as valid and final.
- (x) While Jinnah wanted enforcement of Junagadh's and Hyderabad's accession to Pakistan, he unreasonably demanded a plebiscite in Kashmir, even though the ruler had acceded validly to India, as opined by him.



### **Myth Three : Kashmir had a right of self-determination on accession:**

#### **Facts:**

- (i) Neither any accession provision of the British, nor any international law, nor the UN Charter or international covenants, granted this right to the Kashmiris nor were they eligible.
- (ii) Only *countries* that are colonies, or as a result of war are held under an alien power, can be entitled to the right of self-determination, but it does not apply to sovereign independent States or to a section of a nation, which also cannot secede.
- (iii) Self-determination does not apply to parts of a country, e.g. it did not apply to Kurds living in Iran, Iraq or Turkey, even though they might occupy a defined area.
- (iv) It is not an absolute right nor an unqualified right, nor is it exercisable by the destruction of sovereignty and national unity and integrity. The recent decision of the Supreme Court of Canada reaffirmed the well-recognised principle relating to self-determination and secession. It ruled that Quebec, under international law, had no right to secede from Canada and the people had no right to self determination within the framework of the existing sovereign state and its integrity. (September 1998)
- (v) International legal opinion conclusively establishes that the Kashmiris were not entitled to this right, either before or after accession of J&K State.

### **Myth Four : Pakistan did not invade India nor aid or assist fighting in Kashmir in 1947.**

#### **Facts:**

- (i) After India sent its defence forces to Kashmir on October 27, 1947, its armies saved the capital city Srinagar and fought back the invading forces, who were well-armed, equipped and commanded by professionals from Pakistan.
- (ii) Pakistan radio and newspapers were inciting the Muslim population to rise and fight against the Hindu ruler. The raiders did not even spare the Muslims from atrocities in their campaign.



- (iii) Sheikh Abdullah (released from jail on September 28, 1947), organised with the help of the remnants of the civil authorities, civil defence and essential supplies, created peaceful conditions and mobilised the people to fight the invaders. He took over as an emergency administrator later.
- (iv) India asked Pakistan on December 22, 1947, "to cease and desist from warfare" against the State and stop all military aid and support to the invading forces.
- (v) Pakistan denied granting any assistance, even though Pak involvement of men, armament, equipment, transport and other requisite elements was obvious.
- (vi) After it ignored two reminders from India, India complained to the U.N. Security Council on January 1, 1948, against Pakistan, under Article 35 of the Charter, regarding the situation created by Pakistan.
- (vii) Later on Pakistan filed a counter complaint against India on January 15, 1948, and raised extraneous issues. Pakistan "emphatically denied any aid or assistance to the invaders" and promised "to continue to do all in their power to discourage the tribal movement by all means". The world press and the U.N. observers scoffed at the denials of Pakistan.
- (viii) The U.N. Commission directed Pakistan not to augment forces in the occupied territory, but India complained of their breach. Confronted with proof, Pakistan admitted on July 7, 1949 that three brigades of the Pakistan army were then in Kashmir and the U.N. noted the material charge in the situation.

The U.N. Commissioner, Sir Owen Dixon, recorded that "when they (Pakistan) crossed the borders, they violated international law". They had indeed invaded Kashmir and continued to deny the fact.

**Myth Five : UN recommendations for a plebiscite in Kashmir are valid and should be enforced.**

**Facts:**

- (i) The Governor-General of India, after accepting and affirming the accession of J&K State to India through approved instruments, had in a separate letter to the ruler,



expressed the desire that “after restoration of law and order and clearing of the soil of invaders, the State’s accession would be settled by reference to the people”.

- (ii) After the complaint by India to the U.N. on January 1, 1948, and subsequent lengthy discussions resulting in the resolution of August 13, 1948 (Part III), both India and Pakistan “reaffirmed their wish that the future status of J&K shall be determined in accordance with the will of the people”. The U.N. in their letter of August 28, 1948, detailed and confirmed the conditions under which a plebiscite could be held.
- (iii) These conditions included total withdrawal of Pak forces, its nationals and tribesmen from the State, and disbanding and disarming of Pakistan - occupied forces. Pakistan had nothing to do with the plebiscite, for which India would appoint an administrator. The sovereignty of India had to be restored in all occupied areas. It also stressed that if Pakistan failed to evacuate the occupied areas in the State of its nationals, forces and tribals, and failed to implement the preconditions, no plebiscite or the resolution would be binding on India.
- (iv) Pakistan failed to evacuate the territory occupied, fulfil the conditions and restore India’s sovereignty. The resolution was rendered infructuous by Pakistan’s deliberate acts.
- (v) Pakistan has not expressed its willingness to vacate the occupied area and abide by the U.N. conditions, and still harps on a plebiscite in Kashmir. And even after 34 years without fulfilling its obligations, Pakistan expects the myth to remain alive forever, to suit its propaganda plank.

### **Myth Six : Pakistan says it wants peace with India.**

#### **Facts:**

- (i) In the long record of a 50-year relation with India, Pakistan has unfortunately adopted a confrontational and inimical attitude, both at the national and international levels, and has created an impression of acute rivalry, bitter hostility and an adversarial role for itself. Pakistan rejected an Indian offer



of a no-war pact in April 1963, and two earlier declarations, proposals of 24<sup>th</sup> September 1949 and 14<sup>th</sup> July 1951, as well, making their intent clear.

- (ii) Mainly because of Pakistan's own domestic compulsions, closer political, social and economic relations and a spirit of good neighbourliness has been difficult to achieve, despite many commonalities and Indian goodwill. Pakistan also must realise that its grievance, if any, against India for the emergence of a free Bangladesh is not justified, as the fault fully rested with its own rulers.
- (iii) After the three major wars between the two countries, the peace arrangements concluded for enduring and peaceful relations in future have sadly been frustrated and violated, despite solemn commitments made. In spite of the one-sided outcome of these wars, India, in good faith, did not impose punitive conditions against Pakistan for failure to implement the terms.
  - (a) Pakistan resiled from the U.N. sponsored ceasefire agreement of August 13, 1948 (continued in illegal occupation of 30,000 sq. miles of Indian territory), and the promise of peaceful relations was never kept nor were other conditions fulfilled.
  - (b) The Tashkent Declaration of 1966, after the 1965 war, committed the two countries, amongst other things, to non-interference in each other's internal affairs, discouraged adverse propaganda, encouraged friendly relations and revival of trade, communications, pacific discourse and to promote good neighbourly relations. Yet these sanguine commitments were ignored and in six years' time, conditions deteriorated enough to get involved in another major conflict. By 1965, the Indian complaint to the U.N. had also been relegated to the archives and not pursued further by India or the U.N.
  - (c) The Simla Agreement of 1972 between the two countries was a full-fledged Peace Treaty based on the U.N. Charter and it was agreed to resolve all differences by peaceful means, prevention of unilateral action and to promote



coexistence, respect for each other's territory and integrity, abstention from use of force or threat of force, promotion of trade, travel communication, etc., discouraging adverse propaganda, refraining from crossing of the Line of Control in Kashmir and arranging meetings from time to time to resolve outstanding problems. There was no role for third parties in these agreed terms, and none could be imposed.

The Simla peace and friendship treaty, signed between two sovereign nations, was of a bilateral character, duly ratified by their Parliaments and resolved and committed to the renunciation of war and the pacific settlement of disputes by mutual negotiations. No reservations were written into it nor any unilateral clauses for its denunciation were added. India then returned the areas occupied and 93,000 prisoners of war captured by them, in good faith, on the pleading and assurances of complying with the written and unwritten commitments by Pakistan, at Simla.

- (iv) Indian and Pakistan Prime Ministers (Rajiv Gandhi and Benazir Bhutto) in 1985, signed an agreement (i) not to bomb each other's nuclear installations and (2) endorsed the reaffirmation of the Simla Agreement and its terms.
- (v) Regretfully, while acknowledging the existence of the Simla agreement, Pakistan in 1989 violated the letter and spirit of this agreement, by launching a proxy war against India in Kashmir and propaganda tirades in complete breach of the Simla Understanding, causing dismay in India.
- (vi) The above facts lead to the inevitable conclusion that Pakistan is really not interested in peace with India and unfortunately bears an animus against India.

### Myth Seven : Pakistan is not involved in a proxy war in Kashmir.

### Facts:

- (i) Pakistan says it only gives “moral and diplomatic support”, to freedom fighters(sic) in Kashmir. But all evidence conclusively proves its active involvement with men, arms and equipment, training, funds and fire-cover for the



- (ii) Not successful in achieving their objective in three wars, Pakistan started new plans in 1982 for training Kashmiri youth in arms, and inducting them, with funds and arms into the Valley to create disturbances and sabotage. The programme was extended step by step under the direction of the Inter-Services Intelligence (ISI) directorate, leading to the operation of training camps in Pakistan. POK trained fighters, equipped with arms, ammunition and funds, individually or in groups, under the supervision and control of a foreign fighter, were infiltrated secretly into Kashmir through well-charted routes.

Selig Harrison (of the Carnegie Centre for International Peace, USA) has reported that "Pakistan has precipitated the present war psychosis by escalating insurgent activity in Indian border areas. Evidence collected from Pakistan and U.S. Intelligence showed that 63 camps were operating in 1990. Pakistan, who was confronted with details of such camps, has been unshocked and insensibly persisted in its denials. In view of the massive evidence available, the Pakistan denial has no credibility in the world." As a diversion, Pakistan with the help of some foreign Sikh leaders, also promoted insurgency in Indian Punjab, which has died down since.

- (iii) Captured or surrendering, fighters and infiltrators gave to the Indian authorities full information about the location of camps in Pakistan, details of arms and equipment, training courses for sabotage, two-way communication systems, demolition and bombing techniques (with instructors' names, ranks and specialisation), also procured uniforms, cash and billeting arrangements for the trainees.

The 'U.S. House of Representatives', Task Force on Terrorism and Unconventional Warfare, claimed in 1993: "Pakistan began expanding its operation to sponsor and promote separation and terrorism primarily in Kashmir, as a strategic long-term programme". At one time Pakistan was about to be declared a terrorist State by USA, as is well-



- (iv) Arms, including Kalashnikov guns, rocket launchers, rockets, light machine guns, bombs, RDX, explosive devices and large number and quantity of other war material have fallen into the hands of the J & K State Government, which have been on display. By one estimate, the captured items could fully equip two army divisions of Pakistan, if not more. This explains the meaning of “moral and diplomatic support” in Pak terminology.
- (v) The U.S. State Department Report, “Patterns of Global Terrorism”, also makes a reference to Pakistan’s support of terrorism in Kashmir. The activities of Pakistan are thus well-known and well-documented.
- (vi) With nearly 20,000 people dead in 10 years due to terrorism in Kashmir, together with loss to families, destruction of homes and properties, thefts and rapes, the dimensions of Pakistan-sponsored terrorism in Kashmir are wide. These also include the ethnic cleansing of minorities. According to one report, the proxy war unleashed by Pakistan involved more casualties in Kashmir than the 1947-48 war between India and Pakistan — (The Times of India July 27, 1998) Another report estimates that about 30,000 civilian lives and 5000 of security personal were lost.
- (vii) Human Rights enthusiasts reporting on Kashmir have been condemnatory of excesses by Government services but they have been singularly silent on violations against victims of terrorism in Kashmir. This attitude encouraged militants to be brazen. With the National Human Rights Commission and the State Commissions established in India in 1993, and better training and greater awareness among the defence services, the propaganda advantages of the militants and Pakistan have receded.
- (viii) The above facts will establish beyond doubt that Pakistan did not “merely give moral and diplomatic” support, officially and unofficially, to terrorism in Kashmir, but initiated, programmed and carried out systematically terrorism in the Valley and elsewhere to gain political advantage, which they failed to achieve by open wars.



The above seven myths out of the many created by Pakistan have been examined objectively and broadly, in the light of facts as outlined above, which have established the fictitiousness of the Pakistani stand. It is hoped that future interaction between the two countries, in the interest of enduring peaceful relations, will be governed by factuality, verity and certainty.

No review on the adventure of nuclearisation by Pakistan has been included in this book, either in its historical context or in relation to current developments. However, it is fervently hoped that the two neighbours will in all maturity, sanity and sincerity, ensure that the mass destruction capabilities acquired by them are, at worst, retained for mutual deterrence rather than for mutual destruction.

The aims and objectives of Pakistan are well-known. Indian efforts to improve relations with Pakistan are well-understood and well-pursued. However, while seeking peace with Pakistan, sincerely and resolutely, India cannot allow its unity, sovereignty and integrity to be undermined or violated and must remain vigilant in order to protect its rights, firmly and tenaciously, as mandated. India must persistently wear out and overcome Pakistan's antagonism, whether in respect to terrorism in Kashmir, adverse propaganda, fundamentalism, minority treatment, defence policies, nuclearisation, social and economic relations, international non-cooperation etc., by ignoring the hate-approach and path of enmity of that country, irrespective of covert and overt interests and intrigues of other powers, super or not-so-super. It must be also realised that the sooner India unitedly gains a full measure of economic strength and prosperity, its problems will also ease and relations with other countries will improve. With patience, India, Kashmir and Kashmiri Pandits will naturally gain by peace and so will Pakistan.

#### LET PEACE PREVAIL

*"In peace above all earthly dignities  
A still and quiet conscience"*

William Shakespeare - King Henry VIII



## *Postscript*

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After the nuclear tests in May 1998, a quest was on to find amicable solutions to mutual problems. Probably also realising that “even the most disadvantageous peace was better than the most just wars”, India and Pakistan embarked on steps, variously described as influenced by domestic and international pressure, economic and political considerations, nuclear test ban and disarmament compulsions, and other plausible motivations. Their search resulted in planning summit meetings between their two Prime Ministers, starting with a so called, “zero meeting” in July 1998 at Colombo, and the latest culminating (via cricket) in historical “bus diplomacy” at Lahore in February 1999.

Both Premiers met on 20th February 1999 at Wagah, the Indo-Pakistan gateway to Lahore, and on 21st February at Lahore, and both pleaded for mutual understanding, goodwill and peace. The meetings were marked by bonhomie, hospitality, correct protocol and a red-carpet welcome, reminding some people of pre-Pakistan ties, even as some opposition or criticism was noticed in Lahore. Pakistan reiterated its stand on various issues, including Kashmir as a core. India also referred to Kashmir “as the content and contour of our relations” and also reviewed other matters. Despite memories of past antagonisms, the two delegations met at Lahore, had detailed formal and informal discussions over discordant issues, and took decisions, reflected in the Lahore Declaration of February 1999. The world watched the two antagonists discussing peace, in surprise and with some satisfaction.



The Declaration committed the two governments to work for a shared vision of peace and stability in their countries, non-interference in each others' internal matters, solving all problems including that of Kashmir, through peaceful measures and laying down steps including nuclear confidence-building measures for 'avoidance of conflict between the two countries'. Easing of travel restrictions and facilitating people to people contact will be encouraged. Both agreed to adopt appropriate precautions against freak nuclear accidents, continue unilateral moratorium against nuclear tests, notify each other in advance about missile testing and work out a joint strategy for a nuclear weapon-free world. Discussions on CTBT were also held. For increased mutual trade, efforts are to be energized and mutual consultation on WTO matters agreed upon. Mr. A.B. Vajpayee said that they had come closer, trust had increased, and the first significant steps had been taken; while Mr. Nawaz Sharif hoped that tension would lessen, the arms race stop in due course, as years of hostility are over, in the interest of the two peoples. Kashmir negotiations could be led by foreign ministers, for special attention.

Recognising the burden of history and its compulsions, the path of peace and good neighbourliness will not be easy. Sustained interest in overcoming differences, solving unsolved problems with mutual understanding, are essential for a cooperative, good neighbourly and progressive relationship in the future. It is to be hoped that with peace in India and Pakistan and between themselves, the people of Kashmir also become free from terrorist threats and outrages and are able to live and progress in peace and amity for times to come.



## *Appendices*

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APPENDIX I	Instrument of Accession of Jammu & Kashmir State.
APPENDIX II	Article 370 of the Constitution of India.
APPENDIX III	Inaugural address of Sheikh Abdullah to the Jammu & Kashmir Constituent Assembly on November 5, 1951.
APPENDIX IV	Terms of Delhi Agreement, 1952.
APPENDIX V	Tabulated impact on the Indian Constitution by Constitutal Order, 1954, as applicable to Jammu & Kashmir State.
APPENDIX VI	Tashkent Declaration, 1966.
APPENDIX VII	1975 Delhi Accord
APPENDIX VIII	Simla Agreement, 1977.



### Appendix-I

#### *Instrument of Accession of Jammu and Kashmir State*

Whereas the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an Independent Dominion known as INDIA, and that the Government of India Act, 1935, shall with such omissions, additions, adaptations and modifications as the Governor-General may by order specify, be applicable to the Dominion of India.

And whereas the Government of India Act, 1935, as so adapted by the Governor-General, provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof.

Now, therefore, I, Shriman Indar Mahandar Rajrajeshwar Maharajadhiraj Shri Hari Singhji, Jammu Kashmir Naresh Tatha Tibbet adi Deshадhипathi, Ruler of JAMMU AND KASHMIR State, in the exercise of my sovereignty in and over my said State, do hereby execute this my Instrument of Accession and

1. I hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of Jammu and Kashmir (hereinafter referred to as "this State"), such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India on the 15th day of August 1947 (which Act as so in force is hereinafter referred to as "the Act").



2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State, so far as they are applicable therein by virtue of this my Instrument of Accession.
3. I accept the matters specified in the Schedule hereto as the matters with respect to which the Dominion Legislature may make laws for this State.
4. I hereby declare that I accede to the Dominion of India on the assurance that, if an agreement is made between the Governor-General and the Ruler of this State whereby any function in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of this State, then any such agreement shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.
5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947, unless such amendment is accepted by me by an Instrument supplementary to this Instrument.
6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State, authorising the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purposes of a Dominion law, which applies in this State, deem it necessary to acquire any land, I will, at their request, acquire the land at their expense, or if the land belongs to me, transfer it to them on such terms as may be agreed, or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.
7. Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future Constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future Constitution.
8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, authority



and rights now enjoyed by me as Ruler of this State, or the validity of any law at present in force in this State.

9. I hereby declare that I execute this Instrument on behalf of this State, and that any reference in this Instrument to me or to the Ruler of the State, is to be construed as including a reference to my heirs and successors.

Given under my hand this 26th day of October nineteen hundred and forty-seven.

(Sd.) HARI SINGH

Maharajadhiraj of Jammu and Kashmir State

I do hereby accept this Instrument of Accession.

Dated this twenty-seventh day of October nineteen hundred and forty-seven

(Sd.) MOUNTBATTEN OF BURMA

(Governor-General of India)



### Schedule

The matters with respect to which the Dominion Legislature may make laws for this State

A. *Defence*

1. The naval, military and air forces of the Dominion and any other armed force raised or maintained by the Dominion; any armed forces, including forces raised or maintained by an acceding State, which are attached to, or operating with any of the armed forces of the Dominion.
2. Naval, military and air force works, administration of cantonment areas.
3. Arms. Fire-arms; ammunition.
4. Explosives.

B. *External Affairs*

1. External affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India.
2. Admission into, and emigration and expulsion from India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India or subjects of any acceding State; pilgrimages to places beyond India.
3. Naturalisation

C. *Communications*

1. Posts and telegraphs, including telephones, wireless, broadcasting and other like forms of communication.
2. Federal railways; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fare, station and services terminal charges, interchange of traffic, and the responsibility of railway administration as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administration of such railways as carriers of goods and passengers.



3. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.
  4. Port quarantine.
  5. Major ports, that is to say, the declaration and delimitation of such ports and the constitution and powers of Port Authorities therein.
  6. Aircraft and air navigation; the provision of aerodromes; regulation and organisation of air traffic and of aerodromes.
  7. Lighthouses, including lightships, beacons and other provisions for the safety of shipping and aircraft.
  8. Carriage of passengers and goods by sea or by air.
  9. Extension of the powers and jurisdiction of members of the police force, belonging to any unit, to railway area outside that unit.
- D. *Ancillary*
1. Elections to the Dominion Legislature, subject to the provisions of the Act and of any Order made thereunder.
  2. Offences against laws with respect to any of the aforesaid matters.
  3. Inquiries and statistics for the purposes of any of the aforesaid matters.
  4. Jurisdiction and powers of all courts with respect to any of the aforesaid matters, but, except with the consent of the Ruler of the Acceding State, not so as to confer any jurisdiction or powers upon any courts other than courts ordinarily exercising jurisdiction in or in relation to that State.



## Appendix - II

### *The Constitution of India*

#### *Part - XXI*

#### *<sup>1</sup>[Temporary, Transitional and Special Provisions]*

#### *Articles 370*

<sup>2</sup>[370. Temporary provisions with respect to the State of Jammu & Kashmir (1) Notwithstanding anything in this Constitution.

- (a) the provisions of article 238 shall not apply in relation to the State of Jammu & Kashmir.
- (b) the power of Parliament to make laws for the said State shall be limited to:
  - (i) those matters in the Union List and the Concurrent List, which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and
  - (ii) such other matters in the said Lists, as, with the concurrence of the Government of the State, the President may by order specify.

*Explanation-* For the purposes of this article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu & Kashmir, acting on the advice of the Council of Ministers for the time being in office, under the Maharaja's Proclamation dated the fifth day of March, 1948.

- (c) the provisions of article 1 and of this article shall apply in relation to that State;



- (d) such of the other provisions of this Constitution shall apply in relation to that State, subject to such exceptions and modifications as the President may by order<sup>3</sup> specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State:

Provided further, that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

2. If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take there on.
3. Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:  
Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

Notes:

1. Subs. by the Constitution (Thirteenth Amendment) Act. 1962. 2. For TEMPORARY AND TRANSITIONAL PROVISIONS (w.e.f. 1-12-1963).
2. In exercise of the powers conferred by this article, the President, on the recommendation of the Constituent Assembly of the State of Jammu & Kashmir, declared that, as from the 17th day of November, 1952, the said art. 370, shall be operative with the modification that for the *Explanation* in el. (1) thereof the following *Explanation* is substituted, namely:



*Explanation* - For the purposes of this article, the Government of the State means the person for the time being recognised by the President on the recommendation of the Legislative Assembly of the State as the \**Sadar-i-Riyasat* of Jammu & Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office”.

\*Now “Governor” (Ministry of Law Order No. C.O. 44. dated the 15th November, 1952).

3. See the Constitution (Application to Jammu & Kashmir) Order, 1954. (C.O. 48), as amended from time to time.



### Appendix - III

#### *Sheikh Mohammed Abdullah's Inaugural Address to The Jammu & Kashmir Constituent Assembly*

The following are extracts from the inaugural address of Sheikh Mohammed Abdullah to the Jammu & Kashmir Constituent Assembly on November 5, 1951:

After centuries, we have reached the harbour of our freedom, a freedom which, for the first time in history, will enable the people of Jammu and Kashmir, whose duly elected representatives are gathered here, to shape the future of their country after wise deliberation, and mould their future organs of Government.

When we look back on these years, we see how our footsteps have taken us not among the privileged, but into the homes of the poor and downtrodden. We have fought their battle against privilege and oppression and against those darker powers in the background, which sought to set man against man on the grounds of religion. Our movement grew and thrived side by side with the Indian National Congress and gave strength and inspiration to the people of the Indian States.

I may be forgiven if I feel proud that once again in the history of this State, our people have reached a peak of achievement through what I might call the classical Kashmiri genius for synthesis, born of toleration and mutual respect. Throughout the long tale of our history, the highest pinnacles of our achievement have been scaled when religious bigotry and intolerance ceased to cramp us, and we have breathed the wider air of brotherhood and mutual understanding.

You are no doubt aware of the scope of our present constitutional ties with India. We are proud to have our bonds with India, the goodwill of whose people and Government is available to



us in unstinted and abundant measure. The Constitution of India has provided for a federal union and in the distribution of sovereign powers has treated us differently from other constituent units. With the exception of the items grouped under Defence, Foreign Affairs and Communication in the Instrument of Accession, we have complete freedom to frame our Constitution in the manner we like. In order to live and prosper as good partners in a common endeavour for the advancement of our peoples, I would advise that, while safeguarding our autonomy to the fullest extent so as to enable us to have the liberty to build our country according to the best traditions and genius of our people, we may also, by suitable constitutional arrangements with the Union, establish our right to seek and compel Federal cooperation and assistance to this great task, as well as offer our fullest cooperation and assistance to the Union.

The future political set-up which you decide upon for Jammu & Kashmir must also take into consideration the existence of various sub-national groups in our State. Although culturally diverse, history has forged an uncommon unity between them; they all are pulsating with the same hopes and aspirations, sharing each other's joy and sorrows. While guaranteeing this basic unity in the State, our Constitution must not permit the concentration of power and privilege in the hands of any particular group or territorial region. It must afford the fullest possibilities to each of these groups to grow and flourish in conformity with their cultural characteristics without detriment to the integral unity of the State or the requirements of our social and economic policies.

On Martyrs' Day, the 13th of July, 1950, the Government declared its policy of liquidating the big landed estates and transferring land to the tillers of the soil. On the 17th of October, 1950, was enacted the Big Landed Estates Abolition Act. By this Act, the right of ownership in respect of lands in excess of 22-3/4 acres of land, excluding orchards, grass and fodder farms and fuel reserves, was abolished, and such land was decreed to be transferred to the actual tillers to the extent of their possession. In this way, the right of the cultivator to the ownership of land in his possession was recognised and enforced and no new class of



intermediaries or rent-receivers were allowed to come into being. The abolition of landlordism is thus an accomplished fact and there is no going back on the decision already taken. The Big landed Estates Abolition Act, however, provides for the Constituent Assembly to settle the question of compensation with respect to the land from which expropriation has taken place. That question is now before you for decision.

Finally, we come to the issue which has made Kashmir an object of world interest and has brought her before the forum of the United Nations. This simple issue has become so involved that people have begun to ask themselves, after three and a half years of tense expectancy, 'Is there any solution?' Our answer is affirmative. Everything hinges round the genuineness of the will to find a solution. If we face the issue straight, the solution is simple.

The problem may be posed in this way. Firstly, was Pakistan's action in invading Kashmir in 1947 morally and legally correct, judged by any norms of international behaviour? Sir Owen Dixon's verdict on this issue is perfectly plain. In unambiguous terms he declared Pakistan an aggressor. Secondly, was the Maharajah's accession to India legally valid or not? The legality of the accession has not been seriously questioned by any responsible or independent person or authority.

These two answers are obviously correct. Then where is the justification of treating India and Pakistan at par in matters pertaining to Kashmir? In fact, force of logic dictates the conclusion that the aggressor should withdraw his armed forces, and the United Nations should see that Pakistan gets out of the State.

In that event, India herself, anxious to give the people of the State a chance to express their will freely, would willingly cooperate with any sound plan of demilitarisation. They would withdraw their forces, only garrisoning enough posts to ensure against any repetition of that earlier treacherous attack from Pakistan.

These two steps would have gone a long way to bring about a new atmosphere in the State. The rehabilitation of displaced people, and the restoration of stable civic conditions would have allowed people to express their will and take the ultimate decision.



We, as a Government, are keen to let our people decide the future of our land in accordance with their own wishes. If these three preliminary processes were accomplished, we should be happy to have the assistance of international observers to ensure fair play and the requisite conditions for a free choice by the people.

Instead invader and defender have been put on the same plane. Under various garbs, attempts have been made to sidetrack the main issues. Sometimes, against all our ideals of life and way of living, attempts to divide our territories have been made in the form of separation of our State religion-wise, with ultimate plans of further disrupting its territorial integrity. Once an offer was made to police our country with Commonwealth forces, which threatens to bring in Imperial control by the back door. Besides, the repugnance which our people have, however, to the idea of inviting foreign troops on their soil, the very presence of Commonwealth troops could have created suspicions among our neighbours that we were allowing ourselves to be used as a base of possible future aggression against them. This could easily have made us into a second Korea.

Throughout the struggles that the people of Kashmir waged against autocracy, we should never forget that the Muslim League leadership had completely disassociated itself from them, and that, during the upsurge of 1946, their local party organs had assisted the administration to suppress the movement.

At this crucial time then, Pakistan was under strict cover of secrecy, perfecting her own plans, and the *Dawn*, the Muslim League official organ in Karachi, was appealing to the Maharaja to accede to Pakistan on the grounds that he would have far greater freedom there than in India.

It was at this stage, taking advantage of the isolation of the Kashmiris from the rest of the world; that Pakistan imposed an economic blockade upon us with a view to starving us into submission. Attempts were made even to excite communal hatred to disrupt our peaceful civic life. Even in the face of such provocation, the National Conference, I am proud to say, took an objective and democratic stand. Immediately on my release from



imprisonment. I clarified the issue at a mass meeting in Srinagar. The first and fundamental issue before us was the establishment of a popular Government. Our objective might be summarised as "Freedom First". Then alone could we, as a free people, decide our future associations through accession. I also made it clear that the National Conference would consider this issue without prejudice to its political friends and opponents, and strictly in accordance with the best interests of the country as a whole. I said that, in the state of tension and conflict that obtained both in India and Pakistan, it was difficult for the people here and now to predict what the final shape of both would be.

You will realise, therefore, that we could not be accused of being partial to one side or the other. During that period, we openly discussed the matter with representatives of the Muslim League who had come to Srinagar for this purpose. We even sent one of our representatives to Lahore to acquaint the authorities in Pakistan with our point of view. We were thus still struggling against autocracy and for freedom, when the State was suddenly invaded from the side of Pakistan.

The tribesmen who attacked the State in thousands, killed burned, looted and destroyed whatever came their way, and in this savagery, no section of the people could escape. Even the nuns and nurses of a Catholic Mission were either killed or brutally maltreated. As these raiders advanced towards Srinagar, the last vestige of authority, which lay in the person of the Maharaja, suddenly disappeared from the Capital. This created a strange vacuum, and would have certainly led to the occupation of the whole State by Pakistani troops and tribesmen, if, at this supreme hour of crisis, the entire people of Kashmir had not risen like a solid barrier against the aggressor. They halted their onrush, but could not stop them entirely, as the defenders had not enough experience, training and equipment to fight back effectively. There is no doubt that some of them rose to great heights of heroism during these fateful days.

When the raiders were fast approaching Srinagar, we could think of only one way to save the State from total annihilation — by asking for help from a friendly neighbour. The representatives of



the National Conference, therefore, flew to Delhi to seek help from the Government of India. But the absence of any constitutional ties between our State and India, made it impossible for India to render us any effective assistance in meeting the aggressor. As I said earlier, India had refused to sign a Standstill Agreement with the State on the ground that she could not accept such an Agreement until it had the approval of the alliance. The Government of India showed readiness to accept it. Legally the Instrument of Accession had to be signed by the Ruler of the State. This the Maharaja did. While accepting that accession, the Government of India said that it wished that "as soon as law and order have been restored in Kashmir and her soil cleared of the invader, the question of the State's accession should be settled by reference to the people."

Actuated by a sincere desire to avoid bloodshed and further conflict, the Government of India approached the Security Council in 1948, with a plaint against Pakistan. The request was simple. The contention of India was that Pakistan was responsible for the invasion of Kashmir and was continuing to help the raiders who had been employed as mercenaries for this purpose. And it was further said, that, legally bound as India was to clear the Jammu & Kashmir State of raiders, she might be constrained to pursue the invaders to their bases in Pakistan, which might lead to a still bigger conflagration. India, therefore, wanted the Security Council to dispose of the case as quickly as possible in the interests of world peace. If this had been done, the condition would have *ipso facto* come into being when the people of Jammu & Kashmir would have expressed their will with regard to the continuance of the succession to the Dominion they had joined. This was not to be.

As a realist, I am conscious that nothing is all black or all white, and there are many facets to each of the propositions before us. I shall first speak on the merits and demerits of the State's accession to India. In the final analysis, as I understand it, it is the kinship of ideals which determines the strength of ties between two States. The Indian National Congress has consistently supported the cause of the State's people's freedom. The autocratic rule of the Princes has been done away with and representative governments



have been entrusted with the administration. Steps towards democratisation have been taken and these have raised the people's standard of living, brought about much needed social reconstruction, and, above all, built up their very independence of spirit. Naturally, if we accede to India, there is no danger of a revival of feudalism and autocracy. Moreover, during the last four years, the Government of India has never tried to interfere in our internal autonomy. This experience has strengthened our confidence in them as a democratic State.

The real character of a State is revealed in its Constitution. The Indian Constitution has set before the country the goal of secular democracy based upon justice, freedom and equality for all without distinction. This is the bedrock of modern democracy. This should meet the argument that the Muslims of Kashmir cannot have security in India, where the large majority of the population are Hindus. Any unnatural cleavage between religious groups is the legacy of imperialism, and no modern State can afford to encourage artificial divisions if it is to achieve progress and prosperity. The Indian Constitution has amply and finally repudiated the concept of a religious State, which is a throwback to medievalism, by guaranteeing the equality of rights of all citizens irrespective of their religion, colour, caste, and class.

The national movement in our State naturally gravitates towards these principles of secular democracy. The people here will never accept a principle which seeks to favour the interests of one religion or social group against another. This affinity in political principles, as well as in past association, and our common path of suffering in the cause of freedom, must be weighed properly while deciding the future of the State.

We are also intimately concerned with the economic well-being of the people of this State. As I said before, while referring to constitution-building, political ideals are often meaningless unless linked with economic plans. As a State, we are concerned mainly with agriculture and trade. As you know, and as I have detailed before, we have been able to put through our "land to the tiller" legislation and make of it a practical success. Land and all it means



is an inestimable blessing to our peasants who have dragged along in servitude to the landlord and his allies for centuries without number. We have been able under present conditions to carry these reforms through: are we sure that in alliance with landlord-ridden Pakistan, with so many feudal privileges intact, that these economic reforms of ours will be tolerated? We have already heard that news of our Land Reforms has travelled to the peasants of the enemy-occupied area of our State, who vainly desire a like status and like benefits. In the second place, our economic welfare is bound up with our arts and crafts. The traditional markets for these precious goods, for which we are justly known all over the world, have been centred in India. The volume of our trade, in spite of the dislocation of the last few years, shows this. Industry is also highly important to us. Potentially we are rich in minerals and in the raw materials of industry: we need help to develop our resources. India, being more highly industrialised than Pakistan, can give us equipment, technical services and materials. She can help us too in marketing. Many goods also which it would not be practical for us to produce here — for instance, sugar, cotton cloth, and other essential commodities — can be got by us in large quantities from India. It is around the efficient supply of such basic necessities that the standard of living of the man-in-the-street depends.

It may be pointed out that accession to India will open up possibilities of utilising our forest wealth for industrial purposes, and that, instead of lumber, finished goods, which will provide work for our carpenters and labourers, can be exported to India where there is a ready market for them. Indeed in the presence of our fleets of timber-carrying trucks, river-transport is a crude system which inflicts a loss of some 20 per cent to 35 per cent in transit.

Still another factor has to be taken into consideration. Certain tendencies have been asserting themselves in India which may in the future convert it into a religious State wherein the interests of Muslims will be jeopardised. This would happen if a communal organisation had a dominant hand in the Government, and Congress ideals of the equality of all communities were made to



give way to religious intolerance. The continued accession of Kashmir to India should, however, help in defeating this tendency. From my experience of the last four years, it is my considered judgement that the presence of Kashmir in the Union of India has been the major factor in stabilising relations between the Hindus and Muslims of India. Gandhiji was not wrong when he uttered words before his death which paraphrase, "I lift up mine eyes unto the hills, from whence cometh my help."

As I have said before, we must consider the question of accession with an open mind and not let our personal prejudices stand in the way of a balanced judgement. I will now invite you to evaluate the alternative of accession to Pakistan.

The most powerful argument which can be advanced in her favour is that Pakistan is a Muslim State, and, a big majority of our people being Muslims, the State must accede to Pakistan. This claim of being a Muslim State is, of course, only a camouflage. It is a screen to dupe the common man, so that he may not see clearly that Pakistan is a feudal State, in which a clique is trying, by these methods, to maintain itself in power. In addition to this, the appeal to religion constitutes a sentimental and a wrong approach to the question. Sentiment has its own place in life, but often it leads to irrational action. Some argue, supposedly as a natural corollary to this, that depending on our acceding to Pakistan lies our annihilation or survival. Facts have disproved this. Right-thinking men would point out that Pakistan is not an organic unity of all the Muslims in this subcontinent. It has, on the contrary, caused the dispersion of the Indian Muslims for whose benefit it was claimed to have been created. There are two Pakistans at least a thousand miles apart from each other. The total population of western Pakistan, which is contiguous to our State, is hardly 25 million, while the total number of Muslims resident in India is as many as 40 million. As one Muslim is as good as another, the *Kashmir Muslims, if they are worried by such considerations, should choose the forty million living in India.*

Looking at the matter too from a more modern political angle, religious affinities alone do not and should not normally determine the political alliances of States. We do not find a



Christian bloc, a Buddhist bloc, or even Muslim economic interests; a community of political ideals more appropriately influence the policies of States.

We have another important factor to consider if the State decides to make this the predominant consideration. What will be the fate of the one million non-Muslims now in our State? As things stand at present, there is no place for them in Pakistan. Any solution which will result in the displacement or the total subjugation of such a large number of people will not be just or fair, and it is the responsibility of this House to ensure that the decision that it takes on accession does not militate against the interests of any religious group.

As regards the economic advantages, I have mentioned before the road and river links with Pakistan. In the last analysis, we must, however, remember that we are not concerned only with the movement of people but also with the movement of goods and the linking up of markets. In Pakistan there is a chronic dearth of markets for our products. Neither, for that matter, can she help us with our industrialisation, being herself industrially backward.

On the debit side we have to take into account the reactionary character of her politics and State policies. In Pakistan, we should remember that the lot of the State's subjects has not changed and they are still helpless and under the heel of their rulers, who wield the same unbridled power under which we used to suffer here. This clearly runs counter to our own aspirations for freedom.

On this historic day, we remember the Prime Minister of India, our cherished friend and never-failing comrade on this difficult journey, and besides, an illustrious son of Kashmir, the many friends in India and some even in Pakistan, who in the years before Partition, helped us forward. We remember the Ahrars who went to jail in their thousands for us: Badshah Khan and our friends of the Frontier, now in jail and fighting for their own freedom. Nor can we ever forget our kith and kin across the ceasefire line who are at present living under the heel of the enemy. Their welfare is always dear to us and we shall continue to regard them as an integral part of ourselves.



### Appendix - IV

#### *The Delhi Agreement, 1952*

Main features of the agreement :

- (i) in view of the uniform and consistent stand taken up by the Jammu & Kashmir Constituent Assembly that sovereignty in all members other than those specified in the Instrument of Accession continues to reside in the State, the Government of India agreed that, while the residuary powers of legislature is vested in the Centre in respect of all States other than Jammu & Kashmir, in the case of the latter they are vested in the State itself;
- (ii) it was agreed between the two governments, that in accordance with Article 5 of the Indian Constitution, persons who have their domicile in Jammu & Kashmir, shall be regarded as citizens of India, but the State Legislature was given power to make laws for conferring special rights and privileges on the 'state subjects' in view of the 'state subject notifications of 1927 and 1932: the State Legislature was also empowered to make laws for the 'State subjects' who had gone to Pakistan on account of the communal disturbances of 1947, in the event of their return to Kashmir;
- (iii) as the President of India commands the same respect in the State as he does in the other units of India, Articles 52 to 62 of the Constitution relating to him should be applicable to the State. It was further agreed that the power to grant reprieves, pardons and remission of sentence, etc., would also be vested in the President of India;
- (iv) the Union Government agreed that the State should have its own flag in addition to the Union flag, but it was agreed by the State Government that the State flag would not be a rival



of the Union flag; it was also recognised that the Union flag should have the same status and position in Jammu & Kashmir as in the rest of India, but for historical reasons connected with the freedom struggle in the State, the need for continuance of the State flag was recognised;

- (v) there was complete agreement with regard to the position of the *Sadar-i-Riyasat*; though the *Sadar-i-Riyasat* was to be elected by the State Legislature, he had to be recognised by the President of India before his installation as such; in other Indian States the Head of the State was appointed by the President and was as such his nominee; the person to be appointed as the Head, had to be a person acceptable to the Government of that State; no person who is not acceptable to the State Government can be thrust on the State as the Head. The difference in the case of Kashmir lies only in the fact that *Sadar-i-Riyasat* will, in the first place, be elected by the State Legislature itself instead of being a nominee of the Government and the President of India. With regard to the powers and functions of the *Sadar-i-Riyasat*, the following argument was mutually agreed upon:
  - (a) the Head of the State shall be a person recognised by the President of the Union on the recommendations of the Legislature of the State;
  - (b) he shall hold office during the pleasure of the President;
  - (c) he may, by writing under his hand addressed to the President, resign his office;
  - (d) subject to the foregoing provisions, the Head of the State shall hold office for a term of five years from the date he enters upon his office;
  - (e) provided that he shall, notwithstanding the expiration of his term, continue to hold the office until his successor enter upon his office;
- (vi) with regard to the fundamental rights, some basic principles agreed between the parties were enunciated; it was accepted that the people of the State were to have fundamental rights. But in view of the peculiar position in which the State was



placed, the whole chapter relating to the 'Fundamental Rights' of the Indian Constitution could not be made applicable to the State. The question which remained to be determined was whether the chapter on fundamental rights should form a part of the State Constitution or of the Constitution of India, as applicable to the State;

- (vii) with regard to the jurisdiction of the Supreme Court of India, it was accepted that for the time being, owing to the existence of the Board of Judicial Advisers in the State, which was the highest judicial authority in the State, the Supreme Court should have only appellate jurisdiction;
- (viii) there was a great deal of discussion with regard to the 'Emergency Powers'; the Government of India insisted on the application of Article 352, empowering the President to proclaim a general Emergency in the State; the State Government argued that in exercise of its powers over defence (Item 1 on the Union List), in the event of war or external aggression, the Government of India would have full authority to take steps and proclaim Emergency, but the State delegation was, however, averse to the President exercising the power to proclaim a general Emergency on account of internal disturbance.



### Appendix - V

#### *Impact of The Constitution (Application to Jammu and Kashmir Order of 1954, on The Constituent of India)*

##### AMENDMENTS

1. Preamble
2. Part I  
Add further proviso to article 3, regarding State consent
3. Part II  
Add proviso to Article 7 enabling returning Kashmiri migrants from Pakistan become citizens of India
4. Part IV
  - i) Clause 3 of Article 16 does not apply to Jammu & Kashmir
  - ii) Amendment to Article 19 relating to restrictions desired reasonable by State legislature
  - iii) After Article 35, addition of 35A, no law to invalidate protecting State subject rights
5. Part V  
Article 31 - substituted clause 2 and 3 by new insertions.

##### OMISSIONS

1. Article 31A - Omit proviso and substitute read clause
2. Article 32 - clause 3
3. Article 35 - Omit clause 3 of article 32
4. Article 135 omit
5. Omit Article 139
6. Omit Articles 153, 217, 219, 221, 223, 224, 224a, 225.
7. Article 249 omit
8. Article 255 omit
9. Omit clause (2) of article 267, 273, clause (2) of 28 and article 290
10. Reference to Jammu & Kashmir State excluded from Article 266, 282, 284, 299 and 300
11. Article 328 omit
12. Article 329 omit reference to 328
13. Article 329A omit clause 4 and 5
14. Articles 331, 332, 333, 334, 339 and 342 omitted.



*AMENDMENTS*

- Clause 2-4, Article 133 - after  
 clause 1, substituted new  
 clause Article 134 -  
 clause (2), substitute  
 "State Legislature for  
 Parliament"
6. Part VI
- i) Change reference in  
 Article 220
  - ii) In Article 222 (clause 1)  
 add new clause 2
7. Part XI
- i) Article 246 - change  
 clause 2 and 3 and  
 omit whole of clause 3  
 and 4
  - ii) Substitute read  
 article 248 regarding  
 "Residency power of  
 legislation."
  - iii) In articles 250, 251  
 amended and article  
 253 includes new  
 proviso requiring  
 consent of Jammu &  
 Kashmir.
  - iv) Substituted new clause  
 (2) in article 256
  - v) Article 261 omitted  
 made by Parliament
9. Part XIII
- i) Amended article 303  
 to omit reference to  
 lists in Seventh  
 Schedule
10. Part XIV  
 Amended article 312

*OMISSIONS*

15. Article 334 and 335 do  
 not apply to Jammu &  
 Kashmir
16. Omit Article 360
17. Articles 369, 371,  
 371A, 372A, 373,  
 clause 1-3 and of article  
 374 and article 376 to  
 378 A and 392 are  
 omitted  
 Articles 394 and 395  
 omitted



## AMENDMENTS

including Jammu &  
Kashmir State

## 11. Part XV

- i) Article 324, reference is to Jammu & Kashmir Constitution
- ii) In articles 325, 326, 327 and 329, reference to 'State' does not mean Jammu & Kashmir State, which do not apply

## 12. Part XVIII

- i) In article 352, no internal Emergency proclamation effective in Jammu & Kashmir without concurrence of State Government

## 13. Part XIX

- i) Article 356 (clause 1) refers to Jammu & Kashmir Constitution only
- ii) Article 367 added clause to constitute the State Constitution.

## 14. Part XX

Add proviso to clause (2) of article 368 which restricts amendments relating to law applicable to Jammu & Kashmir to be effective with concurrence procedure by State Government



## Appendix - VI

### *The Tashkent Declaration*

January 10, 1966.

The Prime Minister of India and the President of Pakistan, having met at Tashkent and having discussed the existing relations between India and Pakistan, hereby declare their firm resolve to restore normal and peaceful relations between their countries and to promote understanding and friendly relations between their peoples. They consider the attainment of these objectives of vital importance for the welfare of the 600 million people of India and Pakistan.

- (i) The Prime Minister of India and the President of Pakistan agree that both sides will exert all efforts to create good neighbourly relations between India and Pakistan in accordance with the United Nations Charter. They reaffirm their obligation under the Charter not to have recourse to force and to settle their disputes through peaceful means. They considered that the interests of peace in their region, and particularly in the Indo-Pakistani subcontinent, and, indeed, the interests of the peoples of India and Pakistan, were not served by the continuance of tension between the two countries. It was against this background that Jammu & Kashmir was discussed, and each of the sides set forth its respective position.

#### **Troops withdrawal**

- (ii) The Prime Minister of India and the President of Pakistan have agreed that all armed personnel of the two countries shall be withdrawn not later than February 25, 1966, to the



position they held prior to August 5, 1965, and both sides shall observe the ceasefire terms of the ceasefire line.

- (iii) The Prime Minister of India and the President of Pakistan have agreed that relations between India and Pakistan shall be based on the principle of non-interference in the internal affairs of each other.
- (iv) The Prime Minister of India and the President of Pakistan have agreed that both sides will discourage any propaganda directed against the other country, and will encourage propaganda which promotes the development of friendly relations between the two countries.
- (v) The Prime Minister of India and the President of Pakistan have agreed that the High Commissioner of India to Pakistan and the High Commissioner of Pakistan to India will return to their posts and that the normal functioning of the diplomatic missions of both countries will be restored. Both Governments shall observe the Vienna Convention of 1961, on diplomatic intercourse.

### **Trade Relations**

- (vi) The Prime Minister of India and the President of Pakistan have agreed to consider measures towards the restoration of economic and trade relations, communications, as well as cultural exchanges between India and Pakistan, and to take measures to implement these between India and Pakistan.
- (vii) The Prime Minister of India and the President of Pakistan have agreed to issue instructions to their respective authorities to carry out the repatriation of the prisoners of war.
- (viii) The Prime Minister of India and the President of Pakistan have agreed that both sides will continue discussions of questions relating to the problems of refugees and eviction of illegal immigrants. They also agreed that both sides will not create conditions which will prevent the will of the people. They further agreed to discuss the return of the property and assets, taken over by either side, in connection with the conflict.



### **Soviet Leaders Thanked**

- (ix) The Prime Minister of India and the President of Pakistan have agreed that both sides will continue meetings both at the highest and at other levels on matters of direct concern to both countries. Both sides have recognised the need to set up joint Indo-Pakistani bodies, which will report to their Governments, in order to decide what further steps should be taken.
- (x) The Prime Minister of India and the President of Pakistan record their feelings of deep appreciation and gratitude to the leaders of the Soviet Union, the Soviet Government and personally to the Chairman of the Council of Ministers of the USSR, for their constructive, friendly and noble part in bringing about the present meeting, which has resulted in mutually satisfactory results. They also express to the Government and to the friendly people of Uzbekistan their sincere thankfulness for their overwhelming reception and generous hospitality. They invite the Chairman of the Council of Ministers of the USSR to witness this declaration.



**Appendix - VII***Delhi Accord, 1975*

The following is the text of the agreement reached on November 13, 1974:

1. The State of Jammu & Kashmir, which is a constituent unit of the Union of India, shall in its relations with the Union, continue to be governed by Article 370 of the Constitution of India.
2. The residuary powers of legislation shall remain with the State; however, Parliament will continue to have power to make laws relating to the prevention of activities directed towards declaring, questioning or disrupting the sovereignty and territorial integrity of India, or bringing about cession of a part of the territory of India, or secession of a part of the territory of India from the Union, or causing insult to the Indian national flag, the Indian national anthem and the Constitution.
3. Where any provision of the Constitution of India had been applied to the State of Jammu & Kashmir with adaptations and modifications, such adaptations and modifications can be altered or repealed by an Order of the President under Article 370, each individual one proposed in this behalf being considered on its merits; but provisions of the Constitution of India already applied to the State of Jammu & Kashmir, without adaptation or modification, are unalterable.
4. With a view to assuring freedom in the State of Jammu & Kashmir, to have its own legislation on matters like welfare measures, personal law and precedural laws in a manner



suited to the special conditions in the State, it is agreed that the State Government can review the laws made by Parliament or extended to the State after 1953, on any matter relatable to the Concurrent List, and may decide which of them, in its opinion, needs amendment or repeal. Thereafter, appropriate steps may be taken under Article 254 of the Constitution of India. The grant of President's assent to such legislation would be sympathetically considered. The same approach would be adopted in regard to the laws to be made by the Parliament in future under the proviso to clause 2 of that Article: the State Government shall be consulted regarding the application of any such law to the State and the views of the State Government shall receive the fullest consideration.

5. As an agreement reciprocal to what has been provided under Article 363, a suitable modification of that Article as applied to the State should be made by a Presidential Order to the effect that no law made by the Legislature of the State of Jammu & Kashmir, seeking to make any change in or in the effect of any provision of the Constitution of the State of Jammu & Kashmir relating to any of the undermentioned matters, shall take effect unless the Bill having been reserved for the consideration of the President, receives his assent. The matters are:
  - (a) the appointment, powers, functions, duties, privileges and immunities of the Governor; and
  - (b) the following matters relating to elections, namely, the superintendence, direction and control of elections by the Election Commission of India, eligibility for inclusion in the electoral rolls without discrimination, adult suffrage, and composition of the Legislative Council, being matters specified in Sections 138, 140 and 50 of the Constitution of the State of Jammu & Kashmir.

This agreement is called the Kashmir Accord.



### Appendix - VIII

#### *The Simla Agreement*

“The Government of Pakistan and the Government of India are resolved that the two countries put an end to the conflict and confrontation that have hitherto marred their relations and work for the promotion of a friendly and harmonious relationship and the establishment of durable peace in the subcontinent, so that both countries may henceforth devote their resources and energies to the pressing task of advancing the welfare of their peoples.

“In order to achieve this objective, the Government of Pakistan and the Government of India have agreed as follows:

- (i) That the principles and purposes of the Charter of the United Nations shall govern the relations between the two countries;
- (ii) That the two countries are resolved to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them. Pending the final settlement of any of the problems between the two countries, neither side shall unilaterally alter the situation and both shall prevent organisation, assistance and encouragement of any acts detrimental to the maintenance of peaceful and harmonious relations;
- (iii) That the prerequisite for reconciliation, good neighbourliness and durable peace between them is a commitment by both the countries to peaceful coexistence, respect for each other's territorial integrity and sovereignty, and non-interference in each other's internal affairs, on the basis of equality and mutual benefit;
- (iv) That the basic issues and causes of conflict which have bedevilled the relations between the two countries for the last 25 years shall be resolved by peaceful means;



(v) That they shall always respect each other's national unity, territorial integrity, political independence and sovereign equality;

(vi) That in accordance with the Charter of the United Nations, they will refrain from the threat or use of force against the territorial integrity or political independence of each other.

"Both Governments will take all steps within their power to prevent hostile propaganda directed against each other. Both countries will encourage the dissemination of such information as would promote the development of friendly relations between them.

"In order progressively to restore and normalise relations between the two countries step by step, it was agreed that:

- (i) Steps shall be taken to resume communications, postal, telegraphic, sea, land, including border posts, and air links including overflights.
- (ii) Appropriate steps shall be taken to promote travel facilities for the nationals of the other country.
- (iii) Trade and cooperation in economic and other agreed fields will be resumed as far as possible.
- (iv) Exchange in the fields of science and culture will be promoted."

"In this connection, delegations from the two countries will meet from time to time to work out the necessary details."

"In order to initiate the process of the establishment of durable peace, both the Governments agree that:

- (i) Pakistani and Indian forces shall be withdrawn to their side of the International border.
- (ii) In Jammu & Kashmir, the Line of Control resulting from the ceasefire of December 17, 1971, shall be respected by both sides without prejudice to the recognised position of either side. Neither side shall seek to alter it unilaterally, irrespective of mutual differences and legal interpretations. Both sides further undertake to refrain from threat or the use of force in violation of this line.



- (iii) The withdrawals shall commence upon entry into force of this agreement and shall be completed within a period of 30 days thereof."

"This agreement will be subject to ratification by both countries, in accordance with their respective constitutional procedures, and will come into force with effect from the date on which the instruments of ratification are exchanged."

"Both Governments agreed that their respective Heads will meet again at a mutually convenient time in the future and that, in the meanwhile, the representatives of the two sides will meet to discuss further the modalities and arrangements for the establishment of durable peace and normalisation of relations, including the question of repatriation of prisoners of war and civilian internees, a final settlement of Jammu & Kashmir, and the resumption of diplomatic relations."

ZULFIKAR ALI BHUTTO

President ISLAMIC REPUBLIC OF PAKISTAN,

Simla, the 2nd July, 1992.

INDIRA GANDHI

Prime Minister Republic of India.



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DR. H. L. LUTSHI, Muzaffar



WITH LOVE TO  
HINDU EDUCATION SOCIETY KASHMIR  
FROM :  
DR. N.L. ZUTSHI, Mumbai





*R N Kaul, born in Kashmir, graduated from Lahore and obtained his Masters in Science and Bachelor of Law degree from Lucknow. He opted for commercial management in Air India, retiring as Director and Managing Director of Hotel Corporation of India Limited. With a career spanning over 28 years, he served in East Africa, Europe, South-East Asia, Australia and India. In addition, Mr Kaul spent six years in Malaysia, as Managing Director of two companies, and a member of the boards of others.*

*His books include a comprehensive trilogy titled, The Dynamics of Tourism (Sterling).*

*Kashmir has always been a subject of great personal interest, historically, culturally and politically to the author, and the study of its constitutional evolution is of particular concern to him.*



Gandhi Memorial College of Education, Bantala, Jamnagar

# THE WAIL OF KASHMIR

## MYTHS EXPLODED!

No book on Kashmir can be complete without highlighting Pakistan's role in its affairs. Pakistan's stand on Kashmir is characterised by several self-created myths—myths that are harped upon inspite of their fictitious nature and their non-validity.

In this book, Mr R N Kaul has pinpointed some salient myths and examined them impartially in the light of true facts.

**MYTH ONE : Pakistan was formed of Muslim majority areas, and without Kashmir, it is not complete.**

**MYTH TWO : Kashmir was to have acceded to Pakistan, and its accession to India was not valid.**

**MYTH THREE : Kashmir had a right of self-determination on accession.**

**MYTH FOUR : Pakistan did not invade India nor aid or assist fighting in Kashmir in 1947.**

**MYTH FIVE : UN recommendations for a plebiscite in Kashmir are valid and should be enforced.**

**MYTH SIX : Pakistan says it wants peace with India.**

**MYTH SEVEN : Pakistan is not involved in a proxy war in Kashmir.**

The author not only brings to light several other myths in his book and repudiates them with authentic facts and figures, but also deals with other controversial topics....



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